95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 95-590

OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1977

AUGUST 29, 1977.—Committed tothe Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MURPHY of New York, from the Ad Hoc Select Committee on Outer Continental Shelf, submitted the following

REPORT

together with

ADDITIONAL, SUPPLEMENTAL, DISSENTING, MINORITY, AND ADDITIONAL MINORITY VIEWS

[Including Cost Estimate of the Congressional Budget Office]

[To accompany H.R. 1614]

The Ad Hoc Select Committee on the Outer Continental Shelf, to whom was referred the bill (H.R. 1614) to establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Outer Continental Shelf Lands Act Amendments of 1977".

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TITLE I—FINDINGS AND PURPOSES WITH RESPECT TO MANAGING THE RESOURCES OF THE OUTER CONTINENTAL SHELF

FINDINGS

SEC. 101. The Congress finds and declares that—

(1) the demand for energy in the United States is increasing and will continue to increase for the foreseeable future;

(2) domestic production of oil and gas has declined in recent years;

(3) the United States has become increasingly dependent upon imports of oil from foreign nations to meet domestic energy demand;

(4) increasing reliance on imported oil is not inevitable, but is rather subject to significant reduction by increasing the development of domestic sources of energy supply;

(5) consumption of natural gas in the United States has greatly exceeded additions to domestic reserves in recent years;

(6) technology is or can be made available which will allow significantly increased domestic production of oil and gas without undue harm or damage to the environment;

(7) the lands and resources of the Outer Continental Shelf are public property which the Government of the United States holds in trust for the people of the United States;

(8) the Outer Continental Shelf contains significant quantities of oil and natural gas and is a vital national resource reserve which must be carefully managed so as to realize fair value, to preserve and maintain competition, and to reflect the public interest;

(9) there presently exists a variety of technological, economic, environmental, administrative, and legal problems which tend to retard the develop-

ment of the oil and natural gas reserves of the Outer Continental Shelf;

(10) environmental and safety regulations relating to activities on the Outer Continental Shelf should be reviewed in light of current technology and information;

(11) the development, processing, and distribution of the oil and gas resources of the Outer Continental Shelf, and the siting of related energy facilities, may cause adverse impacts on various States and local governments;

(12) policies, plans, and programs developed by States and local governments in response to activties on the Outer Continental Shelf cannot anticipate and ameliorate such adverse impacts unless such States and local governments are provided with timely access to information regarding activities on the Outer Continental Shelf and an opportunity to review and comment on decisions relating to such activities;

(13) funds must be made available to pay for the prompt removal of any oil spilled or discharged as a result of activities on the Outer Continental Shelf and for any damages to public or private interests caused by such spills or discharges; and

(14) because of the possible conflicts between exploitation of the oil and gas resources in the Outer Continental Shelf and other uses of the marine environment, including fish and shellfish growth and recovery, and recreational activity, the Federal Government must assume responsibility for the minimization or elimination of any conflict associated with such exploitation.

PURPOSES

SEC. 102. The purposes of this Act are to—

(1) establish policies and procedures for managing the oil and natural gas resources of the Outer Continental Shelf in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade;

(2) preserve, protect, and develop oil and natural gas resources in the Outer Continental Shelf in a manner which is consistent with the need (A) to make such resources available to meet the Nation's energy needs as rapidly as possible, (B) to balance orderly energy resource development with protection of the human, marine, and coastal environments, (C) to insure the public a fair and equitable return on the resources of the Outer Continental Shelf, and (D) to preserve and maintain free enterprise competition;

(3) encourage development of new and improved technology for energy resource production which will eliminate or minimize risk of damage to the human, marine, and coastal environments;

(4) provide States, and through States, local governments, which are impacted by Outer Continental Shelf oil and gas exploration, development, and production with comprehensive assistance in order to anticipate and plan for such impact, and thereby to assure adequate protection of the human environment;

(5) assure that States, and through States, local governments, have timely access to information regarding activities on the Outer Continental Shelf, and opportunity to review and comment on decisions relating to such activities, in order to anticipate, ameliorate, and plan for the impacts of such activities;

(6) assure that States, and through States, local governments, which are directly affected by exploration, development, and production of oil and natural gas are provided an opportunity to participate in policy and planning decisions relating to management of the resources of the Outer Continental Shelf;

(7) minimize or eliminate conflicts between the exploration, development, and production of oil and natural gas, and the recovery of other resources such as fish and shellfish;

(8) establish an oilspill liability fund to pay for the prompt removal of any oil spilled or discharged as a result of activities on the Outer Continental Shelf and for any damages to public or private interests caused by such spills or discharges; and

(9) insure that the extent of oil and natural gas resources of the Outer Continental Shelf is assessed at the earliest practicable time.

TITLE II—AMENDMENTS TO THE OUTER CONTINENTAL SHELF LANDS ACT

DEFINITIONS

SEC. 201. (a) Paragraph (c) of section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(c)) is amended to read as follows:

"(c) The term 'lease' means any form of authorization which is issued under section 8 or maintained under section 6 of this Act and which authorizes exploration, development, or production (or a combination thereof as provided in section 8(b)(4) of this Act) of (1) deposits of oil, gas, or other minerals, or (2) geothermal steam;".

(b) Such section is further amended—

(1) in subsection (d), by striking out the period and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following new paragraphs:

"(e) The term 'coastal zone' means the coastal water (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454(b)(1));

"(f) The term 'affected State' means, with respect to any program, plan, lease sale, or other activity proposed, conducted, or approved pursuant to the provisions of this Act, any State—

"(1) the laws of which are declared, pursuant to section 4(a)(2) of this Act, to be the law of the United States for the portion of the Outer Continental Shelf on which such activity is, or is proposed to be, conducted;

"(2) which is or is proposed to be directly connected by transportation facilities to any artificial island, installation, or other device referred to in section 4(a)(1) of this Act;

"(3) which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the Outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;

"(4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the Outer Continental Shelf; or

"(5) in which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities;

"(g) The term 'marine environment' means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the Outer Continental Shelf;

"(h) The term 'coastal environment' means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;

"(i) The term 'human environment' means the physical, esthetic, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, recreation, air and water, employment, and health of those affected, directly or indirectly, by activities occurring on the Outer Continental Shelf;

"(j) The term 'Governor' means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to this Act;

"(k) The term 'exploration' means the process of searching for oil, natural gas, or other minerals, or geothermal steam, including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such resources, and (2) any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made, the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production;

"(l) The term 'development' means those activities which take place following discovery of oil, natural gas, or other minerals, or geothermal steam, in paying quantities, including geophysical activity, drilling, platform construction, pipeline routing, and operation of all on-shore support facilities, and which are for the purpose of ultimately producing the resources discovered;

"(m) The term 'production' means those activities which take place after the successful completion of any means for the removal of resources, including such removal, field operations, transfer of oil, natural gas, or other minerals, or geothermal steam, to shore, operation monitoring, maintenance and work-over drilling;

"(n) The term 'antitrust law' means—

"(1) the Sherman Act (15 U.S.C. 1 et seq.);

"(2) the Clayton Act (15 U.S.C. 12 et seq.);

"(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

"(4) the Wilson Tariff Act (15 U.S.C. 8 et seq.); or

"(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a);

"(o) The term 'fair market value' means the value of any oil, gas, or other mineral, or geothermal steam (1) computed at a unit price equivalent to the average unit price at which such mineral or geothermal steam was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to such lease, or (2) if there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which such mineral or geothermal steam was sold pursuant to other leases in the same region of the Outer Continental Shelf during such period, or (3) if there were no sales of such mineral or geothermal steam from such region during such period, or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by the Secretary;

"(p) The term 'major Federal action' means any action or proposal by the Secretary which is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

"(q) The term 'frontier area' means any area where there has been no development of oil and gas prior to October 1, 1975, and includes the Outer Continental Shelf off southern California, including the Santa Barbara Channel.".

NATIONAL POLICY FOR THE OUTER CONTINENTAL SHELF

SEC. 202. Section 3 of the Outer Continental Shelf Lands Act (43 U.S.C. 1332) is amended to read as follows:

"SEC. 3. NATIONAL POLICY FOR THE OUTER CONTINENTAL SHELF.—It is hereby declared to be the policy of the United States that—

"(1) the subsoil and seabed of the Outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act;

"(2) this Act shall be construed in such a manner that the character of the waters above the Outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected;

"(3) the Outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs;

"(4) since exploration, development, and production of the mineral resources and geothermal steam of the Outer Continental Shelf will have significant impacts on coastal and noncoastal areas of the coastal States, and on other affected States, and, in recognition of the national interest in the effective management of the marine, coastal, and human environments—

"(A) such States and their affected local governments may require assistance in protecting their coastal zones and other affected areas from any temporary or permanent adverse effects of such impacts; and

"(B) such States, and through such States, affected local governments, are entitled to an opportunity to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, mineral resources and geothermal steam of the Outer Continental Shelf;

"(5) the rights and responsibilities of all States and, where appropriate, local governments to preserve and protect their marine, human, and coastal environments through such means as regulation of lands, air, and water uses, of safety, and of related development and activity should be considered and recognized; and

"(6) operations on the Outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.".

LAWS APPLICABLE TO THE OUTER CONTINENTAL SHELF

SEC. 203. (a) Section 4(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)) is amended—

(1) in paragraph (1), by striking out "and fixed structures" and inserting in lieu thereof ", and all installations and other devices permanently or temporarily attached to the seabed.";

(2) in paragraph (1), by striking out "removing, and transporting resources therefrom" and inserting in lieu thereof "or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources"; and

(3) in paragraph (2), by striking out "artificial islands and fixed structures erected thereon" and inserting in lieu thereof "those artificial islands, installations, and other devices referred to in paragraph (1) of this subsection".

(b) Section 4(d) of such Act is amended to read as follows:

"(d) For the purposes the National Labor Relations Act, as amended, any unfair labor practice, as defined in such Act, occurring upon any artificial island, installation, or other device referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the State, the laws of which apply to such artificial island, installation, or other device pursuant to such subsection, except that until the President determines the areas within which such State laws are applicable, the judicial district shall be that of the State nearest the place of location of such artificial island, installation, or other device.".

(c) Section 4 of such Act is amended—

(1) in paragraph (1) of subsection (e), by striking out "the islands and structures referred to in subsection (a)", and inserting in lieu thereof "the artificial islands, installations, and other devices referred to in subsection (a)";

(2) in subsection (f), by striking out "artificial islands and fixed structures located on the Outer Continental Shelf" and inserting in lieu thereof "the artificial islands, installations, and other devices referred to in subsection (a)"; and

(3) in subsection (g), by striking out "the artificial islands and fixed structures referred to in subsection (a)" and inserting in lieu thereof "the artificial islands, installations, and other devices referred to in subsection (a)".

(d) Section 4(e)(1) of such Act is amended by striking out "head" and inserting in lieu thereof "Secretary".

(e) Section 4(e)(2) of such Act is amended to read as follows:

"(2) The Secretary of the Department in which the Coast Guard is operating may mark for the protection of navigation any artificial island, installation, or other device referred to in subsection (a) whenever the owner has failed suitably to mark such island, installation, or other device in accordance with regulations issued under this Act, and the owner shall pay the cost of such marking.".

(f) Section 4(e) of such Act is amended by adding at the end thereof the following new paragraph:

"(3)(A) Any owner or operator of a vessel which is not a vessel of the United States shall, prior to conducting any activity pursuant to this Act or in support of any activity pursuant to this Act within the fishery conservation zone or within fifty miles of any artificial island, installation, or other device referred to in subsection (a) of this section, enter into an agreement pursuant to this paragraph with the Secretary of the Department in which the Coast Guard is operating. Subject to the provisions of subparagraph (B) of this paragraph, such agreement shall provide that such vessel, while engaged in the conduct or support of such activities, shall be subject, in the same manner and to the same extent as a vessel of the United States, to the jurisdiction of such Secretary with respect to the laws of the United States relating to the operation, design, construction, and equipment of vessels, the training of the crews of vessels, and the control of discharges from vessels.

"(B) An agreement entered into between the owner or operator of a vessel and the Secretary of the Department in which the Coast Guard is operating pursuant to subparagraph (A) of this paragraph shall provide that such vessel shall not be subject to the jurisdiction of such Secretary with respect to laws relating to vessel design, construction, equipment, and similar matters—

"(i) if such vessel is engaged in making an emergency call (as defined by such Secretary) at any artificial island, installation, or other device referred to in subsection (a) of this section; or

"(ii) if such vessel is in compliance with standards relating to vessel design, construction, equipment, and similar matters imposed by the country in which such vessel is registered, and such standards are substantially comparable to the standards imposed by such Secretary.

"(C) As used in this paragraph—

"(i) the term 'vessel of the United States' means any vessel, whether or not self-propelled, which is documented under the laws of the United States or registered under the laws of any State;

"(ii) the term 'support of any activity' includes the transportation of resources from any artificial island, installation, or other device referred to in subsection (a) of this section; and

"(iii) the term 'fishery conservation zone' means the zone described in section 101 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1811).".

(g) Section 4 of such Act is further amended by striking out subsection (b) and relettering subsections (c), (d), (e), (f), and (g) as subsections (b), (c), (d), (e), and (f) respectively.

OUTER CONTINENTAL SHELF EXPLORATION AND DEVELOPMENT ADMINISTRATION

SEC. 204. Section 5 of the Outer Continental Shelf Lands Act (43 U.S.C. 1334) is amended to read as follows:

"SEC. 5. ADMINISTRATION OF LEASING OF THE OUTER CONTINENTAL SHELF.—(a) The Secretary shall administer the provisions of this Act relating to the leasing in the Outer Continental Shelf and shall prescribe or retain such regulations as necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein. Except as provided in this subsection, such regulations shall, as of the date of their promulgation, apply to all operations conducted under any lease issued or maintained under the provisions of this Act and shall be in furtherance of the policies of this Act. No regulation promulgated under this Act affecting operations commenced on an existing lease before the effective date of such regulation shall impose any additional requirements which would result in undue delays in the exploration, development, or production of re-

sources unless the Secretary makes a findings that such regulation is necessary to prevent serious or irreparable harm or damage to health, life, property, any mineral deposits or geothermal steam resources, or to the marine, coastal, or human environment. The finding shall be final and shall not be reviewable unless arbitrary or capricious. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary shall cooperate with the relevant departments and agencies of the Federal Government and of the affected States. In the formulation and promulgation of regulations, the Secretary shall request and give due consideration to the views of the Attorney General and the Federal Trade Commission with respect to matters which may affect competition. The regulations prescribed by the Secretary under this subsection shall include, but not be limited to, provisions—

"(1) for the suspension or temporary prohibition of any operation or activity, including production, pursuant to any lease or permit (A) at the request of a lessee, in the national interest, to facilitate proper development of a lease, or to allow for the unavailability of transportation facilities, or (B) if there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits or geothermal steam resources (in areas leased or not leased), or to the marine, coastal, or human environment, and for the extension of any permit or lease affected by such suspension or prohibition by a period equivalent to the period of such suspension or prohibition, except that no permit or lease shall be so extended when such suspension or prohibition is the result of gross negligence or willful violation of such lease or permit, or of regulations issued concerning such lease or permit;

"(2) with respect to cancellation of any lease or permit—

"(A) that such cancellation may occur at any time, if the Secretary determines, after a hearing, that—

"(i) continued activity pursuant to such lease or permit would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits or geothermal steam resources (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environments;

"(ii) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

"(iii) the advantages of cancellation outweigh the advantages of continuing such lease or permit in force;

"(B) that such cancellation shall—

"(i) not occur unless and until operations under such lease or permit have been under suspension or temporary prohibition by the Secretary (with due extension of any lease or permit term) for a total period of five years or for a lesser period, in the Secretary's discretion, upon request of the lessee or permittee;

"(ii) in the case of a lease issued after the date of the enactment of this paragraph (other than a lease canceled for reasons of national security or defense), entitle the lessee to receive such compensation as he shows to the Secretary as being equal to the lesser of (I) the fair value of the canceled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages of both. In the case of an oil spill, and all other costs reasonably anticipated on such lease, or (II) the excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to the date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from the date of payment to the date of reimbursement); and

"(iii) in the case of a lease issued before the date of the enactment of this paragraph, or a lease canceled for reasons of national security or defense (whenever issued), entitle the lessee to receive fair value in accordance with subclause (I) of clause (ii) of this subparagraph;

"(3) for the assignment or relinquishment of a lease;

"(4) for unitization, pooling, and drilling agreements;

"(5) for the subsurface storage of oil and gas other than by the Federal Government;

"(6) for drilling or easements necessary for exploration, development, and production;

"(7) for the prompt and efficient exploration and development of a lease area;

"(8) for compliance with any standards established by a State pursuant to the Clean Air Act to the extent that activities authorized under this Act affect the air quality of such State; and

"(9) for the establishment of air quality standards for operations on the Outer Continental Shelf under this Act.

"(b) The issuance and continuance in effect of any lease, or of any extension, renewal, or replacement of any lease, under the provisions of this Act shall be conditioned upon compliance with the regulations issued under this Act if the lease is issued under the provisions of section 8 hereof, or with the regulations issued under the provisions of section 6(b), clause (2), hereof, if the lease is maintained under the provisions of section 6 hereof.

"(c) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this Act, or of the lease, or of the regulations issued under this Act if the lease is issued under the provisions of section 8 hereof, or of the regulations issued under the provisions of section 6(b), clause (2), hereof, if the lease is maintained under the provisions of section 6 hereof, such lease may be canceled by the Secretary, subject to the right of judicial review as provided in this Act, if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at his record post office address.

"(d) Whenever the owner of any producing lease fails to comply with any of the provisions of this Act, or of the lease, or of the regulations issued under this Act if the lease is issued under the provisions of section 8 hereof, or of the regulations issued under the provisions of section 6(b), clause (2), hereof, if the lease is maintained under the provisions of section 6 hereof, such lease may be forfeited and canceled by an appropriate proceeding in any United States district court having jurisdiction under the provisions of this Act.

"(e) Rights-of-way through the submerged lands of the Outer Continental Shelf, whether or not such lands are included in a lease maintained or issued pursuant to this Act, may be granted by the Secretary for pipeline purposes for the transportation of oil, natural gas, sulfur, or other mineral, or geothermal steam, under such regulations and upon such conditions as may be prescribed by the Secretary, or where appropriate the Secretary of Transportation, including (as provided in section 21(b) of this Act) utilization of the best available and safest technology for pipeline burial, shrouding, and other procedures, and upon the express condition that such oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from such lands in the vicinity of the pipeline in such proportionate amounts as the Federal Power Commission, in the case of gas, and the Interstate Commerce Commission, in consultation with the Administrator of the Federal Energy Administration, in the case of oil, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste. Failure to comply with the provisions of this section or the regulations and conditions prescribed under this section shall be ground for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any district court of the United States having jurisdiction under the provisions of this Act.

"(f)(1) The lessee shall produce any oil or gas, or both, obtained pursuant to an approved development and production plan, at rates consistent with any rule or order issued by the President in accordance with any provision of law.

"(2) If no rule or order referred to in paragraph (1) has been issued, the lessee shall produce such oil or gas, or both, at rates consistent with any regulation promulgated by the Secretary which is to assure the maximum rate of production which may be sustained without loss of ultimate recovery of oil or gas, or both, under sound engineering and economic principles, and which is safe for the duration of the activity covered by the approved plan. The Secretary may permit the lessee to vary such rates if he finds that such variance is necessary.

"(g)(1) In administering the provisions of this Act, the Secretary shall coordinate the activities of any Federal department or agency having authority to issue any license, lease, or permit to engage in any activity related to the exploration, development, or production of oil or gas from the Outer Continental Shelf for purposes of assuring that, to the maximum extent practicable, inconsistent or duplicative requirements are not imposed upon any applicant for, or holder of, any such license, lease, or permit.

"(2) The head of any Federal department or agency who takes any action which has a direct and significant effect on the Outer Continental Shelf or its development shall promptly notify the Secretary of such action and the Secretary shall thereafter notify and consult with the Governor of any affected State and the Secretary may thereafter recommend such change or changes in such action as are considered appropriate.

"(h) After the date of enactment of this section, no holder of any oil and gas lease issued or maintained pursuant to this Act shall be permitted to flare natural gas from any well unless the Secretary finds that there is no practicable way to complete production of such gas, or that such flaring is necessary to alleviate a temporary emergency situation or to conduct testing or work-over operations.".

REVISION OF BIDDING AND LEASE ADMINISTRATION

SEC. 205. (a) Subsections (a) and (b) of section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(a) and (b)) are amended to read as follows:

"(a)(1) The Secretary is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding, under regulations promulgated in advance, an oil and gas lease on submerged lands of the Outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. The bidding shall be by sealed bid and, at the discretion of the Secretary, on the basis of—

"(A) cash bonus bid with a royalty at not less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold;

"(B) variable royalty bid based on a per centum of the production saved, removed, or sold, with a cash bonus as determined by the Secretary;

"(C) cash bonus bid with diminishing or sliding royalty based on such formulae as the Secretary shall determine as equitable to encourage continued production from the lease area as resources diminish, but not less than 12½ per centum at the beginning of the lease period in amount or value of the production saved, removed, or sold;

"(D) cash bonus bid with a fixed share of the net profits of not less than 30 per centum to be derived from the production of oil and gas from the lease area;

"(E) fixed cash bonus with the net profit share reserved as the bid variable;

"(F) cash bonus bid with a royalty at not less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold and a per centum share of net profits of not less than 30 per centum to be derived from the production of oil and gas from the lease area;

"(G) fixed cash bonus of not less than sixty-two dollars per hectare with a work commitment stated in a dollar amount as the bid variable;

"(H) a fixed royalty at not less than 12½ per centum in amount or value of the production saved, removed, or sold, or a fixed per centum share of net profits of not less than 30 per centum to be derived from the production of oil and gas from the lease area, with a work commitment stated in a dollar amount as the bid variable;

"(I) a fixed cash bonus of not less than sixty-two dollars per hectare, with a fixed royalty of not less than 12½ per centum in amount or value of the production saved, removed or sold, or a fixed per centum share of net profits of not less than 30 per centum to be derived from the production of oil and gas from the lease area with a work commitment stated in dollar amounts as the bid variable; or

"(J) any modification of bidding systems authorized in subparagraphs (A) through (I) of this paragraph and any other systems of bid variables, terms, and conditions which the Secretary determines to be useful to accomplish the purposes and policies of this section, including leasing systems in which exploration lessees share in the costs of exploration and the con-

sideration received from sale of subsequent leases for development and production, notwithstanding any inconsistent provisions of sections 8(b)(4), 8(k), and 9 of this Act, except that any payment in connection with any bidding system authorized pursuant to this subparagraph shall not exceed amounts appropriated for that purpose by Congress.

"(2) The Secretary may, in his discretion, defer any part of the payment of the cash bonus, as authorized in paragraph (1) of this subsection, according to a schedule announced at the time of the announcement of the lease sale, but such payment shall be made in total no later than five years from the date of the lease sale.

"(3) The Secretary may, in order to promote increased production on the lease area, through direct, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease for such area.

"(4)(A) Before utilizing any bidding system authorized in subparagraphs (C) through (J) of paragraph (1), the Secretary shall establish such system in accordance with this paragraph.

"(B) The establishment by the Secretary of any bidding system pursuant to subparagraph (A) of this paragraph shall be by rule on the record after an opportunity for an agency hearing. Any modification by the Secretary of any such bidding system shall be by rule.

"(C) Not later than thirty days before the effective date of any rule prescribed under subparagraph (B) of this paragraph, the Secretary shall transmit such rule to Congress.

"(5)(A) The Secretary shall utilize the bidding alternatives from among those authorized by this subsection, in accordance with subparagraphs (B) and (C) of this paragraph, so as to accomplish the purposes and policies of this Act, including (i) providing a fair return to the Federal Government, (ii) increasing competition, (iii) assuring competent and safe operations, (iv) avoiding undue speculation, (v) avoiding unnecessary delays in exploration, development, and production, (vi) discovering and recovering oil and gas, (vii) developing new oil and gas resources in an efficient and timely manner, and (viii) limiting administrative burdens on government and industry. In order to select a bid to accomplish these purposes and policies, the Secretary may, in his discretion, require each bidder to submit bids for any area of the Outer Continental Shelf in accordance with more than one of the bidding alternatives set forth in paragraph (1) of this subsection.

"(B) During the five-year period commencing on the date of enactment of this subsection, the Secretary may, in order to obtain statistical information to determine which bidding alternatives will best accomplish the purposes and policies of this Act, require each bidder to submit bids for any area of the Outer Continental Shelf in accordance with more than one of the bidding systems set forth in paragraph (1) of this subsection. For such statistical purposes, leases may be awarded using a bidding alternative selected at random or determined by the Secretary to be desirable for the acquisition of valid statistical data and otherwise consistent with the provisions of this Act.

"(C)(i) Except as provided in clause (ii), the bidding system authorized by subparagraph (A) of paragraph (1) of this subsection shall not be applied to more than 50 per centum of the total area offered for lease each year, during the five-year period beginning on the date of enactment of this subsection, in each region in a frontier area. The Secretary shall define such regions of the Outer Continental Shelf. For purposes of this subparagraph, in calculating the total area offered for lease each year in accordance with the bidding system authorized by such paragraph (A), the Secretary shall not take into account any area offered for lease in accordance with such bidding system if the lease for such area is offered in accordance with the terms set forth in subsection (b)(4)(B) of this section.

"(ii) If, during the first year following the date of enactment of this subsection, the Secretary finds that compliance with the limitation set forth in clause (i) would unduly delay development of the oil and gas resources of the Outer Continental Shelf, he may exceed that limitation after he submits to the Senate and the House of Representatives a report stating his finding and the reasons therefor. If, in any other year following the date of enactment of this subsection, the Secretary finds that compliance with the limitation set forth in clause (i) would unduly delay efficient development of the oil and gas resources of the Outer Continental Shelf, result in less than a fair return to the Federal Government, or result in a reduction of competition, he shall submit

to the Senate and House of Representatives a report stating his specific findings and detailed reasons therefor. The Secretary may thereafter, for that year, exceed such limitation unless either the Senate or the House of Representatives passes a resolution of disapproval of the Secretary's finding within sixty days after receipt of such report (not including days when Congress is not in session).

"(iii) Clauses (iv) through (xi) of this subparagraph are enacted by Congress—

"(I) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the Rules of each House, respectively, but they are applicable only with respect to the procedures to be followed in that House in the case of resolutions described by this subparagraph, and they supersede other Rules only to the extent that they are inconsistent therewith; and

"(II) with full recognition of the constitutional right of either House to change the Rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other Rule of that House.

"(iv) A resolution disapproving a proposal of the Secretary shall immediately be referred to a committee (and all resolutions with respect to the same proposal shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

"(v) If the committee, to which has been referred any resolution disapproving a proposal of the Secretary has not reported the resolution at the end of ten calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution with respect to the same proposal which has been referred to the committee.

"(vi) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same recommendation), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(vii) If the motion to discharge is agreed to, or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same proposal.

"(viii) When the committee has reported, or has been discharged from further consideration of, a resolution as provided, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(ix) Debate on the resolution is limited to not more than two hours, to be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

"(x) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution with respect to a proposal, and motions to proceed to the consideration of other business, shall be decided without debate.

"(xi) Appeals from the decisions of the Chair relating to the application of the Rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a request shall be decided without debate.

"(D) Within six months after the end of each fiscal year, the Secretary shall report to the Congress, as provided in section 15 of this Act, with respect to the use of the various bidding options provided for in this subsection. Such report shall include—

"(i) the schedule of all lease sales held during such year and the bidding system or systems utilized;

"(ii) the schedule of all lease sales to be held the following year and the bidding system or systems to be utilized;

"(iii) the benefits and costs associated with conducting lease sales using the various bidding systems;

"(iv) if applicable, the reasons why a particular bidding system has not been or will not be utilized;

"(v) if applicable, the reasons why more than 50 per centum of the area leased in the past year, or to be offered for lease in the upcoming year, was or is to be leased under the bidding system authorized by subparagraph (A) of paragraph (1) of this subsection; and

"(vi) an analysis of the capability of each bidding system to accomplish the purposes and policies stated in subparagraph (A) of this paragraph.

"(6)(A) In any lease sale where the bidding system authorized by subparagraph (A) of paragraph (1) of this subsection and any one or more of the bidding systems authorized by subparagraphs (B) through (J) of paragraph (1) of this subsection are to be used, the Secretary shall publicly choose, by a random selection method, those tracts which are to be offered under the bidding system authorized by such subparagraph (A) and those which are to be offered under one or more of the bidding systems authorized by such subparagraphs (B) through (J).

"(B) The selection of tracts under this paragraph shall occur after receipt by the Secretary of public nominations of lease tracts to be included in a proposed lease sale, but before the initial announcement of the tracts selected for inclusion in such proposed lease sale.

"(C) Before selection of tracts for inclusion in the proposed lease sale, the Secretary shall publish a notice in the Federal Register describing the random selection method to be used and shall, immediately after such selection, publish a notice in the Federal Register designating the lease tracts selected which are to be offered under the bidding system authorized by subparagraph (A) of paragraph (1) and the lease tracts selected which are to be offered under any one or more of the bidding systems authorized by subparagraphs (B) through (J) of paragraph (1).

"(D) The Secretary may exclude a tract from the use of a random selection technique under this paragraph if, after receipt by the Secretary of public nominations of lease tracts to be included in a proposed lease sale, the Secretary makes a finding that use of such technique would unduly delay or hinder exploration, development, and production of oil and gas, or prevent the receipt of fair return for the lease.

"(7) The Secretary may, by regulation, permit submission of bids made jointly by or on behalf of two or more persons for an oil and gas lease under this Act unless more than one of the joint bidders, directly or indirectly, controls or is chargeable worldwide with an average daily production of one million six hundred thousand barrels a day or more, or the equivalent, in crude oil, natural gas, and liquefied petroleum products.

"(b) An oil and gas lease issued pursuant to this section shall—

"(1) be for a tract consisting of a compact area not exceeding five thousand seven hundred and sixty acres, as the Secretary may determine, unless the Secretary finds that a larger area is necessary to comprise a reasonable economic production unit;

"(2) be for an initial period of—

"(A) five years; or

"(B) not to exceed ten years where the Secretary finds that such longer period is necessary to encourage exploration and development in areas of unusually deep water or unusually adverse weather conditions,

and as long after such initial period as oil or gas may be produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon;

"(3) require the payment of amount or value as determined by one of the bidding systems set forth in subsection (a) of this section;

"(4)(A) entitle the lessee to explore, develop, and produce oil and gas resources contained within the lease area, conditioned upon due diligent requirements and the approval of the development and production plan required by this Act; or

"(B) entitle the lessee to explore, or develop and produce, the oil and gas resources within all or any part of the lease area, unless within sixty days after the date of the submission by the Secretary to the Congress of a proposal to award one or more leases in a specific lease sale in accordance with this subparagraph (not including days when Congress is not in session), the Senate and the House of Representatives pass a joint resolution

disapproving such proposal, in accordance with the procedures described in clauses (iii) through (xi) of subsection (a)(5)(C) of this section;

"(5) provide for suspension or cancellation of the lease during the initial lease term or thereafter pursuant to section 5 of this Act;

"(6) contain such rental and other provisions as the Secretary may prescribe at the time of offering the area for lease; and

"(7) provide a requirement that the lessee offer 20 per centum of the crude oil, condensate, and natural gas liquids produced from such lease, at the market value and point of delivery applicable to Federal royalty oil, to small or independent refiners as defined in the Emergency Petroleum Allocation Act of 1973.".

(b) Section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) is further amended by striking out subsection (j), by relettering subsection (c) through (i), and all references thereto, as subsections (h) through (n), respectively, and by inserting immediately after subsection (b) the following new subsections:

"(c) No lease may be issued if the Secretary finds that an applicant for a lease, or a lessee, is not meeting due diligence requirements on other leases. Innocent or nonnegligent parties to any joint lease which is canceled due to the failure of one or more partners to exercise due diligence on other leases may seek damages for such loss from the responsible partner or partners.

"(d) No lease issued under this Act may be sold, exchanged, assigned, or otherwise transferred except with the approval of, and subject to renegotiation by, the Secretary. Prior to any such approval, the Secretary shall consult with and give due consideration to the views of the Attorney General and the Federal Trade Commission.

"(e) Nothing in this Act shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

"(f)(1) At the time of soliciting nominations for the leasing of lands within three miles of the seaward boundary of any coastal State, the Secretary shall provide the Governor of any such State—

"(A) an identification and schedule of the areas and regions offered for leasing;

"(B) all information concerning the geographical, geological, and ecological characteristics of such regions;

"(C) an estimate of the oil and gas reserves in the areas proposed for leasing; and

"(D) an identification of any field, geological structure, or trap located within three miles of the seaward boundary of a coastal State.

"(2) After receipt of nominations for any area of the Outer Continental Shelf within three miles of the seaward boundary of any coastal State, the Secretary shall inform the Governor of such coastal State of any such area which the Secretary believes should be given further consideration for leasing and which he concludes, in consultation with the Governor of such coastal State, may contain one or more oil or gas pools or fields underlying both the Outer Continental Shelf and lands subject to the jurisdiction of such State. If, with respect to such area, the Secretary selects a tract or tracts which may contain one or more oil or gas pools or fields underlying both the Outer Continental Shelf and submerged lands subject to the jurisdiction of such State, the Secretary shall offer the Governor of such coastal State the opportunity to enter into an agreement concerning the disposition of revenues which may be generated by a Federal lease within such area in order to permit their fair and equitable division between the State and Federal Government.

"(3) Within ninety days after the offer by the Secretary pursuant to paragraph (2) of this subsection, the Governor shall elect whether to enter into such agreement and shall notify the Secretary of his decision. If the Governor accepts the offer, the terms of any lease issued shall be consistent with the provisions of this Act, with applicable regulations, and, to the maximum extent practicable, with the applicable laws of the coastal State. If the Governor declines the offer, or if the parties cannot agree to terms concerning the disposition of revenues from such lease (by the time the Secretary determines to offer the area for lease), the Secretary may nevertheless proceed with the leasing of the area.

"(4) Notwithstanding any other provision of this Act, the Secretary shall deposit in a separate account in the Treasury of the United States all bonuses, royalties, and other revenues attributable to oil and gas pools underlying both

the Outer Continental Shelf and submerged lands subject to the jurisdiction of any coastal State until such time as the Secretary and the Governor of such coastal State agree on, or if the Secretary and the Governor of such coastal State cannot agree, as a district court of the United States determines, the fair and equitable disposition of such revenues and any interest which has accrued and the proper rate of payments to be deposited in the treasuries of the Federal Government and such coastal State.

"(g) Nothing contained in this section shall be construed to alter, limit, or modify any claim of any State to any jurisdiction over, or any right, title, or interest in, any submerged lands.".

(c) Section 8(j) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(j)), as relettered by subsection (b) of this section, is amended—

(1) by inserting "and leases of geothermal steam" immediately after "sulphur"; and

(2) by inserting "or geothermal steam" immediately after "such mineral".

OUTER CONTINENTAL SHELF OIL AND GAS EXPLORATION

SEC. 206. Section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340) is amended to read as follows:

"SEC. 11. OUTER CONTINENTAL SHELF OIL AND GAS EXPLORATION.—(a)(1) The Secretary or any other Federal department or agency, and any person whom the Secretary by permit or regulation may authorize, may conduct geological and geophysical explorations, including core and test drilling, in the Outer Continental Shelf, which do not interfere with or endanger actual operations pursuant to any lease issued or maintained pursuant to this Act, and which are not unduly harmful to the marine environment.

"(2) The provisions of paragraph (1) of this subsection shall not apply to any person conducting explorations pursuant to an approved exploration plan on any area under lease to such person pursuant to the provisions of this Act.

"(b) Except as provided in subsection (f) of this section, beginning ninety days after the date of enactment of this subsection, no exploration pursuant to any oil and gas lease issued or maintained under this Act may be undertaken by the holder of such lease, except in accordance with the provisions of this section.

"(c)(1) Except as otherwise provided in this Act, prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this Act, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any one region of the Outer Continental Shelf, or by a group of lessees acting under a unitization pooling, or drilling agreement, and shall be approved by the Secretary if he finds that such plan is consistent with the provisions of this Act, regulations prescribed under this Act, and the provisions of such lease or leases. The Secretary shall require such modifications or remodifications of such plan as are necessary to achieve such consistency. The Secretary shall approve such plan, as submitted or modified, within thirty days of its submission or resubmission, except that if the Secretary determines that (A) any proposed activity under such plan would result in any condition which would permit him to suspend such activity pursuant to regulations prescribed under section 5(a)(1) of this Act, and (B) such proposed activity cannot be modified to avoid such condition, he may delay the approval of such plan.

"(2) An exploration plan submitted under this subsection shall include, in the degree of detail which the Secretary may by regulation require—

"(A) a schedule of anticipated exploration activities to be undertaken;

"(B) a description of equipment to be used for such activities;

"(C) the general location of each well to be drilled; and

"(D) such other information deemed pertinent by the Secretary.

"(3) The Secretary may, by regulation, require that such plan be accompanied by a general statement of anticipated onshore activity resulting from such exploration, the effects and impacts of such activity, and the development and production intentions, which shall be for planning purposes only and which shall not be binding on any party.

"(d) The Secretary may, by regulation, require any lessee operating under an approved exploration plan to obtain a permit prior to drilling any well in accordance with such plan.

"(e)(1) If a revision of an exploration plan approved under this subsection is submitted to the Secretary, the process to be used for the approval of such revision shall be the same as set forth in subsection (c) of this section.

"(2) Except as otherwise provided in this Act, all exploration activities pursuant to any lease shall be conducted in accordance with an approved exploration plan or an approved revision of such plan.

"(f)(1) Exploration activities pursuant to any lease on which a drilling permit had been issued prior to the date of enactment of this subsection shall be considered in compliance with this section, but the Secretary may require such activities to be described in an exploration plan, or require a revised exploration plan, and require any such plan to be accompanied by a general statement in accordance with subsection (c)(3) of this section.

"(2) In accordance with section 5(a) of this Act, the Secretary may require the submission of additional information or establish additional requirements on lessees conducting exploration activities pursuant to any lease issued prior to the date of enactment of this subsection.

"(g)(1) The Secretary may permit qualified applicants to conduct geological explorations, including core and test drilling, in those areas and subsurface geological structures of the Outer Continental Shelf which the Secretary or the applicants believe contain significant hydrocarbon accumulations.

"(2) The Secretary shall, at least once during the two-year period beginning on the date of the enactment of this subsection, offer persons wishing to conduct geological explorations pursuant to permits issued under paragraph (1) of this subsection an opportunity to apply for such permits.

"(3) The Secretary shall provide by regulation the length of time during which he will offer applicants the opportunity to obtain a permit pursuant to this subsection.

"(h) Any permit for geological explorations authorized by this section shall be issued only if the Secretary determines, in accordance with regulations issued by the Secretary, that—

"(1) the applicant for such permit is qualified;

"(2) the exploration will not interfere with or endanger operations under any lease issued or maintained pursuant to this Act; and

"(3) such exploration will not be unduly harmful to aquatic life in the area, result in pollution, create hazardous or unsafe conditions, unreasonably interfere with other uses of the area, or disturb any site, structure, or object of historical or archeological significance.".

ANNUAL REPORT

SEC. 207. (a) Section 15 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344) is amended to read as follows:

"SEC. 15. ANNUAL REPORT BY SECRETARY TO CONGRESS.—Within six months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives the following reports:

"(1) A report on the leasing and production program in the Outer Continental Shelf during such fiscal year, which shall include—

"(A) a detailed accounting of all moneys received and expended;

"(B) a detailed accounting of all exploration, exploratory drilling, leasing, development, and production activities;

"(C) a summary of management, supervision, and enforcement activities;

"(D) a list of all shut-in and flaring wells; and

"(E) recommendations to the Congress (i) for improvements in management, safety, and amount of production from leasing and operations in the Outer Continental Shelf, and (ii) for resolution of jurisdictional conflicts or ambiguities.

"(2) A report, prepared after consultation with the Attorney General, with recommendations for promoting competition in the leasing of Outer Continental Shelf lands, which shall include any recommendations or findings by the Attorney General, any plans for implementing recommended administrative changes, and drafts of any proposed legislation, and which shall contain—

"(A) an evaluation of the competitive bidding systems permitted under the provisions of section 8 of this Act, and, if applicable, the reasons why a particular bidding system has not been utilized;

"(B) an evaluation of alternative bidding systems not permitted under section 8 of this Act, and why such system or systems should or should not be utilized;

"(C) an evaluation of the effectiveness of restrictions on joint bidding in promoting competition and, if applicable, any suggested administrative or legislative action on joint bidding;

"(D) an evaluation of present measures and a description of any additional measures to encourage entry of new competitors; and

"(E) an evaluation of present measures and a description of additional measures to insure an adequate supply of oil and gas to independent refiners and distributors.".

NEW SECTIONS OF THE OUTER CONTINENTAL SHELF LANDS ACT

SEC. 208. The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) is amended by adding at the end thereof the following new sections:

"SEC. 18. OUTER CONTINENTAL SHELF LEASING PROGRAM.—(a) The Secretary, pursuant to procedures set forth in subsections (c) and (d), shall prepare, periodically revise, and maintain an oil and gas leasing program to implement the policies of this Act. The leasing program shall indicate as precisely as possible the size, timing, and location of leasing activity which he determines will best meet national energy needs for the five-year period following its approval or reapproval. Such leasing program shall be prepared and maintained in a manner consistent with the following principles:

"(1) Management of the Outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the Outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the Outer Continental Shelf and the marine, coastal, and human environments.

"(2) Timing and location of exploration, development, and production of oil and gas among the oil- and gas-bearing physiographic regions of the Outer Continental Shelf shall be based on a consideration of—

"(A) existing information concerning the geographical, geological, and ecological characteristics of such regions;

"(B) an equitable sharing of developmental benefits and environmental risks among the various regions;

"(C) the location of such regions with respect to, and the relative needs of, regional and national energy markets;

"(D) the location of such regions with respect to other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the Outer Continental Shelf;

"(E) the interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination;

"(F) laws, goals, and policies of affected States which have been specifically identified by the Governors of such States as relevant matters for the Secretary's consideration;

"(G) programs promulgated by coastal States and approved pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

"(H) whether the oil and gas producing industry will have sufficient resources, including equipment and capital, to bring about the exploration, development, and production of oil and gas in such regions in an expeditious manner;

"(I) the relative environmental sensitivity and marine productivity of different areas of the Outer Continental Shelf; and

"(J) relevant baseline and predictive information for different areas of the Outer Continental Shelf.

"(3) The Secretary shall select the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.

"(4) Leasing activities shall be conducted to assure receipt of fair value for the lands leased and the rights conveyed by the Federal Government.

'(b) The leasing program shall include estimates of the appropriations and staff required to—

"(1) obtain resource information and any other information needed to prepare the leasing program required by this section;

"(2) analyze and interpret the exploratory data and any other information which may be compiled under the authority of this Act;

"(3) conduct environmental baseline studies and prepare any environmental impact statement required in accordance with this Act and with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

"(4) supervise operations conducted pursuant to each lease in the manner necessary to assure due diligence in the exploration and development of the lease area and compliance with the requirements of applicable law and regulations, and with the terms of the lease.

"(c)(1) During the preparation of any proposed leasing program under this section, the Attorney General and the Federal Trade Commission shall report to the Secretary with respect to the effect on competition of Outer Continental Shelf exploration, development, and production. Such reports shall analyze competition and individual market shares within regional markets.

"(2) During the preparation of any proposed leasing program under this section, the Secretary shall invite and consider suggestions for such program from any interested Federal agency, from the Governor of any State which may become an affected State under such proposed program, and from the executive of any affected local government unit in such an affected State. The Secretary may also invite or consider suggestions from any other person.

"(3) After such preparation and at least sixty days prior to publication of a proposed leasing program in the Federal Register pursuant to paragraph (4) of this subsection, the Secretary shall transmit a copy of such proposed program to the Governor of each affected State for review and comment. The Governor shall solicit comments from the executives of local governments in his State affected by the proposed programs. If any comment is received by the Secretary at least fifteen days prior to submission to the Congress pursuant to such paragraph (4) and includes a request for any modification of such proposed program, the Secretary shall reply in writing, granting or denying such requests in whole or in part, or granting such request in such modified form as the Secretary considers appropriate, and stating his reasons therefor. All such correspondence between the Secretary and the Governor of any affected State, together with any additional information and data relating thereto, shall accompany such proposed program when it is submitted to the Congress.

"(4) Within nine months after the date of enactment of this section, the Secretary shall submit a proposed leasing program to the Congress, the Attorney General, the Federal Trade Commission, the Governors of affected States, and through the Governors, the executives of affected local governments, and shall publish such proposed program in the Federal Register.

"(d)(1) Within ninety days after the date of publication of a proposed leasing program, the Attorney General shall submit comments on the anticipated effects of such proposed program upon competition, and any State, local government, or other person may submit comments and recommendations as to any aspect of such proposed program.

"(2) At least sixty days prior to approving a proposed leasing program, the Secretary shall submit it to the President and the Congress, together with any comments received. Such submission shall indicate why any specific recommendation of the Attorney General or a State or a local government was not accepted.

"(3) After the leasing program has been approved by the Secretary, or after eighteen months following the date of enactment of this section, whichever first occurs, no lease shall be issued unless it is for an area included in the approved leasing program and unless it contains provisions consistent with the approved leasing program, except that leasing shall be permitted to continue until such program is approved and for so long thereafter as such program is under judicial or administrative review pursuant to the provisions of this Act.

"(e) The Secretary shall review the leasing program approved under this section at least once each year, and he may revise and reapprove such program, at any time, in the same manner as originally developed.

"(f) The Secretary shall, by regulation, establish procedures for—

"(1) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;

"(2) public notice of and participation in development of the leasing program;

"(3) review by State and local governments which may be impacted by the proposed leasing;

"(4) periodic consultation with State and local governments, oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in activity in or on the Outer Continental Shelf, including those involved in fish and shellfish recovery, and recreational activities; and

"(5)(A) coordination of the program with the management program being developed by any State pursuant to section 305 of the Coastal Zone Management Act of 1972, and (B) assuring consistency, as provided by the Coastal Zone Management Act, with the program of any State which has been approved pursuant to section 306 of such Act, to the maximum extent practicable.

Such procedures shall be applicable to any revision or reapproval of the leasing program.

"(g) The Secretary may obtain from public sources, or purchase from private sources, any survey, data, report, or other information (including interpretations of such data, survey, report, or other information) which may be necessary to assist him in preparing any environmental impact statement and in making other evaluations required by this Act. Data of a classified nature provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. The Secretary shall maintain the confidentiality of all privileged data or information for such period of time as is provided for in this Act, established by regulation, or agreed to by the parties.

"(h) The heads of all Federal departments and agencies shall provide the Secretary with any nonprivileged information and may provide the Secretary with any privileged information he requests to assist him in preparing the leasing program. Privileged information provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. In addition, the Secretary shall utilize the existing capabilities and resources of such Federal departments and agencies by appropriate agreement.

"SEC. 19. COORDINATION AND CONSULTATION WITH AFFECTED STATES AND LOCAL GOVERNMENTS.—(a) Any Governor of any affected State or the executive of any affected local government in such State may submit recommendations to the Secretary regarding the size, timing, or location of a proposed lease sale or with respect to a proposed development and production plan.

"(b) Such recommendations shall be submitted within sixty days after notice of such proposed lease sale or ninety days after receipt of such development and production plan.

"(c) The Secretary shall accept recommendations of the Governor and may accept recommendations of the executive of any affected local government if he determines, after having provided the opportunity for full consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. For the purposes of this subsection, a determination of the national interest shall be based on the desirability of obtaining oil and gas supplies in a balanced manner and on the findings, purposes, and policies of this Act. The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.

"(d) The Secretary's determination that recommendations are not consistent with the national interest shall be final and shall not, alone, be a basis for invalidation of a proposed lease sale or a proposed development and production plan in any suit or judicial review pursuant to section 23 of this Act, unless found to be arbitrary or capricious.

"(e) The Secretary is authorized to enter into cooperative agreements with affected States for purposes which are consistent with this Act and other applicable Federal law. Such agreements may include, but not be limited to, the sharing of information (in accordance with the provisions of section 26 of this Act), the joint utilization of available expertise, the facilitating of permitting procedures,

joint planning and review, and the formation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws, regulations, and stipulations relevant to Outer Continental Shelf operations both onshore and offshore.

"SEC. 20. BASELINE AND MONITORING STUDIES.—(a)(1) The Secretary shall conduct a study of any area or region included in any lease sale in order to establish baseline information concerning the status of the human, marine, and coastal environments of the Outer Continental Shelf and the coastal areas which may be affected by oil and gas development in such area or region.

"(2) Each study required by paragraph (1) shall be commenced not later than six months after the date of enactment of this section with respect to any area or region where a lease sale has been held or scheduled before such date of enactment, and not later than six months prior to the holding of a lease sale with respect to any area or region where no lease sale has been held or scheduled before such date of enactment. The Secretary may utilize information collected in any study prior to such date of enactment in conducting any such study.

"(3) In addition to developing baseline information, any study of an area or region, to the extent practicable, shall be designed to predict impacts on the marine biota which may result from chronic low level pollution or large spills associated with Outer Continental Shelf production, from the introduction of drill cuttings and drilling muds in the area, and from the laying of pipe to serve the offshore production area, and the impacts of development offshore on the affected and coastal areas.

"(b) Subsequently to the leasing and developing of any area or region, the Secretary shall conduct such additional studies to establish baseline information as he deems necessary and shall monitor the human, marine, and coastal environments of such area or region in a manner designed to provide time-series and data trend information which can be used for comparison with any previously collected data for the purpose of identifying any significant changes in the quality and productivity of such environments, for establishing trends in the areas studied and monitored, and for designing experiments to identify the causes of such changes.

"(c) The Secretary shall, by regulation, establish procedures for carrying out his duties under this section, and shall plan and carry out such duties in full cooperation with affected States. To the extent that other Federal agencies have prepared environmental impact statements, are conducting studies, or are monitoring the affected human, marine, or coastal environment, the Secretary may utilize the information derived therefrom in lieu of directly conducting such activities. The Secretary may also utilize information obtained from any State or local government entity, or from any person, for the purposes of this section. For the purpose of carrying out his responsibilities under this section, the Secretary may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of any Federal, State, or local government agency.

"(d) The Secretary shall consider available relevant baseline information in making decisions (including those relating to exploration plans, drilling permits, and development and production plans), in developing appropriate regulations and lease conditions, and in issuing operating orders.

"(e) As soon as practicable after the end of each fiscal year, the Secretary shall submit to the Congress and make available to the general public an assessment of the cumulative effect of activities conducted under this Act on the human, marine, and coastal environments.

"(f) In executing his responsibilities under this section, the Secretary shall, to the maximum extent practicable, enter into appropriate arrangements to utilize, on a reimbursable basis the capabilities of the Department of Commerce. In carrying out such arrangements, the Secretary of Commerce is authorized to enter into contracts or grants with any person, organization, or entity with funds appropriated to the Secretary of the Interior pursuant to this Act.

"SEC. 21. SAFETY REGULATIONS.—(a) Upon the date of enactment of this section, the Secretary, the Secretary of Labor, and the Secretary of the Department in which the Coast Guard is operating shall, in consultation with each other and, as appropriate, with the heads of other Federal departments and agencies, promptly commence a joint study of the adequacy of existing safety regulations, and of the technology, equipment, and techniques available for the exploration, development, and production of the natural resources of the Outer Continental Shelf. The results of this study shall be submitted to the President who shall submit a plan to Congress of his proposals to promote safety and

health in the exploration, development, and production of the natural resources of the Outer Continental Shelf.

"(b) In exercising their respective responsibilities for the artificial islands, installations, and other devices referred to in section 4(a)(1) of this Act, the Secretary, and the Secretary of the Department in which the Coast Guard is operating, shall require, on all new drilling and production operations and, wherever practicable, on existing operations, the use of the best available and safest technology which the Secretary determines to be economically achievable, wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Secretary determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technology.

"(c)(1) Within sixty days after the date of enactment of this section, the Secretary of Labor shall promulgate interim regulations or standards pursuant to the Occupational Safety and Health Act of 1970 applying to diving activities in the water above the Outer Continental Shelf, and to other unregulated hazardous working conditions for which he, in consultation with the Secretary and the Secretary of the Department in which the Coast Guard is operating, determines such regulations or standards are necessary. Such regulations or standards may be modified from time to time as necessary, and shall remain in effect until final regulations or standards are promulgated.

"(2) Notwithstanding section 4(b)(1) of the Occupational Safety and Health Act of 1970, regulations for occupational safety and health shall be promulgated and enforced by the Department of Labor and the Department in which the Coast Guard is operating, in accordance with their respective statutory authority. The two Departments shall coordinate their activities in a manner which avoids duplication of effort and maximizes protection of employees.

"(d) Nothing in this section shall affect or duplicate any authority provided by law to the Secretary of Transportation to establish and enforce pipeline safety standards and regulations.

"(e)(1) In administering the provisions of this section, the Secretary shall consult and coordinate with the heads of other appropriate Federal departments and agencies for purposes of assuring that, to the maximum extent practicable, inconsistent or duplicative requirements are not imposed.

"(2) The Secretary shall make available to any interested person a compilation of all safety and other regulations which are prepared and promulgated by any Federal department or agency and applicable to activities on the Outer Continental Shelf. Such compilation shall be revised and updated annually.

"SEC. 22. ENFORCEMENT.—(a) The applicable Federal officials shall strictly enforce safety and environmental regulations promulgated pursuant to this Act. Each Federal department and agency may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of other Federal departments and agencies for the enforcement of their respective regulations.

"(b) It shall be the duty of any holder of a lease or permit under this Act to—

"(1) maintain all places of employment within such lease area or within the area covered by such permit in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the lease holder or permit holder or of any contractor or subcontractor operating within such lease area or within the area covered by such permit on the Outer Continental Shelf;

"(2) maintain all operations within such lease area or within the area covered by such permit in compliance with regulations intended to protect persons, property, and the environment on the Outer Continental Shelf; and

"(3) allow prompt access, at the site of any operation subject to safety regulations, to any inspector, and to provide such documents and records which are pertinent to occupational or public health, safety, or environmental protection, as may be requested.

"(c) The Secretary and the Secretary of the Department in which the Coast Guard is operating shall individually, or jointly if they so agree, promulgate regulations to provide for—

"(1) scheduled onsite inspection, at least once a year, of each facility on the Outer Continental Shelf which is subject to any environmental or safety regulation promulgated pursuant to this Act, which inspection shall

include all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents; and

"(2) periodic onsite inspection, at least once a year, without advance notice to the operator of such facility to assure compliance with such environmental or safety regulations.

"(d)(1) The Secretary or the Secretary of the Department in which the Coast Guard is operating shall make an investigation and public report on each major fire and each major oil spillage occurring as a result of operations conducted pursuant to this Act, and may, in his discretion, make an investigation and report of lesser oil spillages. For purposes of this subsection, a major oil spillage is any spillage in one instance of more than two hundred barrels of oil over a period of thirty days. All holders of leases or permits issued or maintained under this Act shall cooperate with the appropriate Secretary in the course of any such investigation.

"(2) The Secretary or the Secretary of Labor shall make an investigation and public report on any death or serious injury occurring as a result of operations conducted pursuant to this Act, and may, in his discretion, make an investigation and report of any injury. For purposes of this subsection, a serious injury is one resulting in substantial impairment of any bodily unit or function. All holders of leases or permits issued or maintained under this Act shall cooperate with the appropriate Secretary in the course of any such investigation.

"(3) For purposes of carrying out their responsibilities under this section, the Secretary, the Secretary of Labor, and the Secretary of the Department in which the Coast Guard is operating may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of any Federal department or agency.

"(e) The Secretary, or, in the case of occupational safety and health, the Secretary of Labor, shall consider any allegation from any person of the existence of a violation of a safety regulation issued under this Act. The respective Secretary shall answer such allegation no later than ninety days after receipt thereof, stating whether or not such alleged violation exists and if so, what action has been taken.

"(f) In any investigation conducted pursuant to this section, the Secretary, the Secretary of Labor, or the Secretary of the Department in which the Coast Guard is operating shall have power to summon witnesses and to require the production of books, papers, documents, and any other evidence. Attendance of witnesses or the production of books, papers, documents, or any other evidence shall be compelled by a similar process as in district courts of the United States. Such Secretary, or his designee, shall administer all necessary oaths to any witnesses summoned before such investigation.

"(g) The Secretary shall, after consultation with the Secretary of Labor and the Secretary of the Department in which the Coast Guard is operating, include in his annual report to Congress required by section 15 of this Act the number of violations of safety regulations reported or alleged, the investigations undertaken, the results of such investigations, and any administrative or judicial action taken as a result of such investigations.

"SEC. 23. CITIZEN SUITS, COURT JURISDICTION, AND JUDICIAL REVIEW.—(a)(1) Except as provided in this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this Act against any person, including the United States, and any other Government instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution) for any alleged violation of any provision of this Act or any regulation promulgated under this Act, or of the terms of any permit or lease issued by the Secretary under this Act.

"(2) Except as provided in paragraph (3) of this subsection, no action may be commenced under subsection (a)(1) of this section—

"(A) prior to sixty days after the plaintiff has given notice of the alleged violation, in writing under oath, to the Secretary and any other appropriate Federal official, to the State in which the violation allegedly occurred or is occurring, and to any alleged violator; and

"(B) if the Secretary or his authorized representative, any other appropriate Federal official, or the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States or a State with respect to such matter, but in any such action any person having a legal interest which is or may be adversely affected or aggrieved may intervene as a matter of right.

"(3) An action may be brought under this subsection immediately after notification of the alleged violation in any case in which the alleged violation constitutes an imminent threat to the public health or safety or would immediately affect a legal interest of the plaintiff.

"(4) In any action commenced pursuant to this section, the Secretary, the Attorney General, or any other appropriate Federal official, if not a party, may intervene as a matter of right.

"(5) A court, in issuing any final order in any action brought pursuant to subsection (a)(1) or subsection (c) of this section, may award costs of litigation, including reasonable attorneys' and expert witness fees, to any party, whenever such court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in a sufficient amount to compensate for any loss or damage suffered, in accordance with the Federal Rules of Civil Procedure.

"(6) Except as provided in subsection (c) of this section, all suits challenging actions or decisions allegedly in violation of, or seeking enforcement of, the provisions of this Act, or any regulation promulgated under this Act, or the terms of any permit or lease issued by the Secretary under this Act, shall be undertaken in accordance with the procedures described in this subsection. Nothing in this section shall restrict any right which any person or class of persons may have under any other Act or common law to seek appropriate relief.

"(b) Except as provided in subsection (c) of this section, the district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with (1) any operation conducted on the Outer Continental Shelf which involves exploration, development, or production of the natural resources of the subsoil and seabed of the Outer Continental Shelf, or which involves rights to such natural resources, or (2) the cancellation, suspension, or termination of a lease or permit under this Act. Proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the State nearest the place the cause of action arose.

"(c)(1) Any action of the Secretary to approve a leasing program pursuant to section 18 of this Act shall be subject to judicial review only in the United States Court of Appeals for the District of Columbia.

"(2) Any action of the Secretary to approve, require modification of, or disapprove any exploration plan or any development and production plan under this Act shall be subject to judicial review only in a United States court of appeals for a circuit in which an affected State is located.

"(3) The judicial review specified in paragraphs (1) and (2) of this subsection shall be available only to a person who (A) participated in the administrative proceedings related to the actions specified in such paragraphs, (B) is adversely affected or aggrieved by such action, (C) files a petition for review of the Secretary's action within sixty days after the date of such action, and (D) promptly transmits copies of the petition to the Secretary and to the Attorney General.

"(4) Any action of the Secretary specified in paragraph (1) or (2) shall only be subject to review pursuant to the provisions of this subsection, and shall be specifically excluded from citizen suits which are permitted pursuant to subsection (a).

"(5) The Secretary shall file in the appropriate court the record of any public hearings required by this Act and any additional information upon which the Secretary based his decision, as required by section 2112 of title 28, United States Code. Specific objections to the action of the Secretary shall be considered by the court only if the issues upon which such objections are based have been submitted to the Secretary during the administrative proceedings related to the actions involved.

"(6) The court of appeals conducting a proceeding pursuant to this subsection shall consider the matter under review solely on the record made before the Secretary. The findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

"(7) Upon the filing of the record with the court pursuant to paragraph (5), the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari.

"SEC. 24. REMEDIES AND PENALTIES.—(a) At the request of the Secretary, the Attorney General or a United States attorney shall institute a civil action in the district court of the United States for the district in which the affected operation is located for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this Act, any regulation or order issued under this Act, or any term of a lease, license, or permit issued pursuant to this Act.

"(b) If any person fails to comply with any provision of this Act, or any term of a lease, license, or permit issued pursuant to this Act, or any regulation or order issued under this Act, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than $10,000 for each day of the continuance of such failure. The Secretary may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing.

"(c) Any person who knowingly and willfully (1) violates any provision of this Act, any term of a lease, license, or permit issued pursuant to this Act, or any regulation or order issued under the authority of this Act designed to protect health, safety, or the environment or conserve natural resources, (2) makes any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under this Act, (3) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this Act, or (4) reveals any data or information required to be kept confidential by this Act shall, upon conviction, be punished by a fine of not more than $100,000, or by imprisonment for not more than ten years, or both. Each day that a violation under clause (1) of this subsection continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in clause (3) of this subsection, shall constitute a separate violation.

"(d) Whenever a corporation or other entity is subject to prosecution under subsection (c) of this section, any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subsection (c) of this section.

"(e) The remedies and penalties prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this section shall be in addition to any other remedies and penalties afforded by any other law or regulation.

"SEC. 25. OIL AND GAS DEVELOPMENT AND PRODUCTION.—(a)(1) Prior to development and production pursuant to an oil and gas lease issued after the date of enactment of this section in a frontier area, or issued or maintained prior to such date of enactment with respect to which no oil or gas has been discovered in commercial quantities prior to such date of enactment, the lessee shall submit a development and production plan (hereinafter in this section referred to as a 'plan') to the Secretary, for approval pursuant to this section.

"(2) A plan shall be accompanied by a statement describing all facilities and operations, other than those on the Outer Continental Shelf, proposed by the lessee and known by him (whether or not owned or operated by such lessee) which will be constructed or utilized in the development, production, transportation, processing, or refining of oil or gas from the lease area, including the location and site of such facilities and operations, the land, labor, material, and energy requirements associated with such facilities and operations, and all environmental and safety safeguards to be implemented.

"(3) Except for any privileged information (as such term is defined in regulations issued by the Secretary), the Secretary, within ten days after receipt of a plan and statement, shall (A) submit such plan and statement to the Governor of any affected State, and upon request, to the executive of any affected local government, and (B) make such plan and statement available to any other appropriate interstate regional entity and the public.

"(b) After the date of enactment of this section, no oil and gas lease may be issued pursuant to this Act in any frontier area, unless such lease requires that development and production of reserves be carried out in accordance with a plan which complies with the requirements of this section.

"(c) A plan may apply to more than one oil and gas lease, and shall set forth, in the degree of detail established by regulations issued by the Secretary—

"(1) the specific work to be performed;

"(2) a description of all facilities and operations located on the Outer Continental Shelf which are proposed by the lessee or known by him (whether or not owned or operated by such lessee) to be directly related to the proposed development, including the location and size of such facilities and operations, and the land, labor, material, and energy requirements associated with such facilities and operations;

"(3) the environmental safeguards to be implemented on the Outer Continental Shelf and how such safeguards are to be implemented;

"(4) all safety standards to be met and how such standards are to be met;

"(5) an expected rate of development and production and a time schedule for performance; and

"(6) such other relevant information as the Secretary may by regulation require.

"(d)(1) The Secretary shall, at least once prior to approving a development and production plan in any frontier area, declare approval of a plan for a lease or set of leases to be a major Federal action. For the purposes of this section, such approval shall be deemed to be a major Federal action.

"(2) The Secretary may require lessees on adjacent or nearby leases to submit preliminary or final plans for their leases, prior to or immediately after a determination by the Secretary that the procedures under the National Environmental Policy Act of 1969 shall commence.

"(e) If approval of a development and production plan is found to be a major Federal action, the Secretary shall transmit the draft environmental impact statement to the Governor of any affected State, any appropriate interstate regional entity, and the executive of any affected local government area, for review and comment, and shall make such draft available to the general public.

"(f) If approval of a development and production plan is not found to be a major Federal action, the Governor of any affected State, and the executive of any affected local government area shall have ninety days from receipt of the plan from the Secretary to submit comments and recommendations. Such comments and recommendations shall be made available to the public upon request. In addition, any interested person may submit comments and recommendations.

"(g)(1) After reviewing the record of any public hearing held with respect to the approval of a plan pursuant to the National Environmental Policy Act of 1969 or the comments and recommendations submitted under subsection (f) of this section, the Secretary shall, within sixty days after the release of the final environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 in accordance with subsection (d)[1] of this section, or sixty days after the period provided for comment under subsection (f) of this section, approve, disapprove, or require modifications of the plan. The Secretary shall require modification of a plan if he determines that the lessee has failed to make adequate provision in such plan for safe operations on the lease area or for protection of the human, marine, or coastal environment, including compliance with the regulations prescribed by the Secretary pursuant to paragraphs (8) and (9) of section 5(a) of this Act. Any modification required by the Secretary which affects land use and water use of the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) shall be consistent with such program unless the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act. The Secretary shall disapprove a plan—

"(A) if the lessee fails to demonstrate that he can comply with the requirements of this Act or other applicable Federal law, including the regulations prescribed by the Secretary pursuant to paragraphs (8) and (9) of section 5(a) of this Act;

"(B) if those activities described in the plan which affect land use and water use of the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) are not concurred with by such State pursuant to section 307(c) of such Act, and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of such Act.

"(C) if operations threaten national security or national defense; or

"(D) if the Secretary determines, because of exceptional geological con-

ditions in the lease area, exceptional resource values in the marine or coastal environment, or other exceptional circumstances, that (i) implementation of the plan would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal or human environments, (ii) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time, and (iii) the advantages of disapproving the plan outweigh the advantages of development and production.

"(2)(A) If a plan is disapproved—

"(i) under subparagraph (A) of paragraph (1); or

"(ii) under subparagraph (B) of paragraph (1) with respect to a lease issued after approval of a coastal zone management program pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1455),

the lessee shall not be entitled to compensation because of such disapproval.

"(B) If a plan is disapproved—

"(i) under subparagraph (C) or (D) of paragraph (1); or

"(ii) under subparagraph (B) of paragraph (1) with respect to a lease issued before approval of a coastal zone management program pursuant to the Coastal Zone Management Act of 1972, and such approval occurs after the lessee has submitted a plan to the Secretary.

the term of the lease shall be duly extended, and at any time within five years after such disapproval, the lessee may reapply for approval of the same or a modified plan, and the Secretary shall approve, disapprove, or require modifications of a plan in accordance with this subsection.

"(C) Upon the expiration of the five-year period described in subparagraph (B) of this paragraph, or, in the Secretary's discretion, at an earlier time upon request of a lessee, if the Secretary has not approved a plan, the Secretary shall cancel the lease. In the case of any lease canceled after disapproval of a plan under such subparagraph (B) which was issued after the date of enactment of this section, the lessee shall be entitled to receive such compensation as he shows to the Secretary is equal to the lesser of—

"(i) the fair value of the canceled rights as of the date of cancellation taking account of both anticipated revenues from the lease and anticipated costs, including cost of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, in the case of an oil spill, and all other costs reasonably anticipated with respect to the lease; or

"(ii) the excess, if any, over the lessee's revenues from the lease (plus interest thereon from date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease, and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from the date of payment to the date of reimbursement).

In the case of any lease canceled after disapproval of a plan under subparagraph (B) of this paragraph which was issued before the date of enactment of this section, the lessee shall be entitled to receive fair value in accordance with clause (i) of this subparagraph. The Secretary may, at any time within the five-year period described in such subparagraph (B), require the lessee to submit a plan of development and production for approval, disapproval, or modification. If the lessee fails to submit a required plan expeditiously and in good faith, the Secretary shall find that the lessee has not been duly diligent in pursuing his obligations under the lease, and shall immediately cancel such lease, without compensation, under the provisions of section 5(c) of this Act.

"(3) The Secretary shall, from time to time, review each plan approved under this section. Such review shall be based upon changes in available information and other onshore or offshore conditions affecting or impacted by development and production pursuant to such plan. If the review indicates that the plan should be revised to meet the requirements of this subsection, the Secretary shall require such revision.

"(h) The Secretary may approve any revision of an approved plan proposed by the lessee if he determines that such revision will lead to greater recovery of oil and natural gas, improve the efficiency, safety, and environmental protection of the recovery operation, is the only means available to avoid substantial

economic hardship to the lessee, or is otherwise not inconsistent with the provisions of this Act, to the extent such revision is consistent with protection of the marine and coastal environments. Any revision of an approved plan which the Secretary determines is significant shall be reviewed in accordance with subsections (d) through (g) of this section.

"(i) Whenever the owner of any lease fails to submit a plan in accordance with regulations issued under this section, or fails to comply with an approved plan, the lease may, after notice to such owner of such failure and expiration of any reasonable period allowed for corrective action, and after an opportunity for a hearing, be forfeited, canceled, or terminated, subject to the right of judicial review, in accordance with the provisions of section 23(b) of this Act. Termination of a lease because of failure to comply with an approved plan, including required modifications or revisions, shall not entitle a lessee to any compensation.

"(j) If any development and production plan submitted to the Secretary pursuant to this section provides for the production and transportation of natural gas, the lessee shall contemporaneously submit to the Federal Power Commission that portion of such plan which relates to production of natural gas and the facilities for transportation of natural gas. The Secretary and the Federal Power Commission shall agree as to which of them shall prepare any environmental impact statement which may be required pursuant to the National Environmental Policy Act of 1969 applicable to such portion of such plan, or conduct studies as to the effect on the environment of implementing it. Thereafter, the findings and recommendations by the agency preparing such environmental impact statement or conducting any studies which they may deem desirable pursuant to that agreement shall be adopted by the other agency, and such other agency shall not independently prepare another environmental impact statement or duplicate such studies with respect to such portion of such plan, but the Federal Power Commission, in connection with its review of an application for a certificate of public convenience and necessity applicable to such transportation facilities pursuant to section 7 of the Natural Gas Act (15 U.S.C. 717), may prepare such environmental studies or statement relevant to certification of such transportation facilities as have not been covered by an environmental impact statement or studies prepared by the Secretary. The Secretary, in consultation with the Federal Power Commission, shall promulgate rules to implement this subsection, but the Federal Power Commission shall retain sole authority with respect to rules and procedure applicable to the filing of any application with the Commission and to all aspects of the Commission's review of, and action on, any such application.

"(k) An oil and gas lease issued or maintained under this Act which is located an any area which is not a frontier area shall be subject to the provisions of this section if the Secretary determines, pursuant to regulations prescribed by the Secretary, that the likely environmental or onshore impacts of the development and production of such lease make the application of the provisions of this section in the public interest.

"SEC. 26. OUTER CONTINENTAL SHELF OIL AND GAS INFORMATION PROGRAM.—(a)(1)(A) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas pursuant to this Act shall provide the Secretary access to all data obtained from such activity and shall provide copies of such specific data, and any interpretation of any such data, as the Secretary may request. Such data and interpretation shall be provided in accordance with regulations which the Secretary shall prescribe.

"(B) If an interpretation provided pursuant to subparagraph (A) of this paragraph is made in good faith by the lessee or permittee, such lessee or permittee shall not be held responsible for any consequence of the use of or reliance upon such interpretation.

"(C) Whenever any data is provided to the Secretary pursuant to subparagraph (A) of this paragraph—

"(i) by a lessee, in the form and manner of processing which is utilized by such lessee in the normal conduct of his business, the Secretary shall pay the reasonable cost of reproducing such data; and

"(ii) by a lessee, in such other form and manner of processing as the Secretary may request, or by a permittee, the Secretary shall pay the reasonable cost of processing and reproducing such data,

pursuant to such regulations as he may prescribe.

"(2) Each Federal department and agency shall provide the Secretary with any data obtained by such Federal department or agency conducting exploration pursuant to section 11 of this Act, and any other information which may be necessary or useful to assist him in carrying out the provisions of this Act.

"(b)(1) Information provided to the Secretary pursuant to subsection (a) of this section shall be processed, analyzed, and interpreted by the Secretary for purposes of carrying out his duties under this Act.

"(2) As soon as practicable after information provided to the Secretary pursuant to subsection (a) of this section is processed, analyzed, and interpreted, the Secretary shall make available to the affected States and to any requesting affected local government, a summary of data designed to assist them in planning for the onshore impacts of possible oil and gas development and production. Such summary shall include estimates of (A) the oil and gas reserves in areas leased or to be leased, (B) the size and timing of development if and when oil or gas, or both, is found, (C) the location of pipelines, and (D) the general location and nature of onshore facilities.

"(c) The Secretary shall prescribe regulations to (1) assure that the confidentiality of privileged information received by the Secretary under this section will be maintained, and (2) set forth the time periods and conditions which shall be applicable to the release of such information. Such regulations shall include a provision that no such information will be transmitted to any affected State unless the lessee, or the permittee and all persons to whom such permittee has sold such information under promise of confidentiality, agree to such transmittal.

"(d)(1) The Secretary shall transmit to any affected State—

"(A) a copy of all relevant actual or proposed programs, plans, reports, environmental impact statements, tract nominations (including negative nominations) and other lease sale information, any similar type of relevant information, and all modifications and revisions thereof and comments thereon, prepared or obtained by the Secretary pursuant to this Act;

"(B)(i) the summary of data prepared by the Secretary pursuant to subsection (b)(2) of this section, and (ii) any other processed, analyzed, or interpreted data prepared by the Secretary pursuant to subsection (b)(1) of this subsection, unless the Secretary determines that transmittal of such data prepared pursuant to subsection (b)(1) would unduly damage the competitive position of the lessee or permittee who provided the Secretary with the information which the Secretary had processed, analyzed, or interpreted; and

"(C) any relevant information received by the Secretary pursuant to subsection (a) of this section, subject to any applicable requirements as to confidentiality which are set forth in regulations prescribed under subsection (c) of this section.

"(2) Notwithstanding the provisions of any regulation required pursuant to the second sentence of subsection (c) of this section, the Governor of any affected State may designate an appropriate State official to inspect, at a regional location which the Secretary shall designate, any privileged information received by the Secretary regarding any activity adjacent to such State, except that no such inspection shall take place prior to the sale of a lease covering the area in which such activity was conducted. Knowledge obtained by such State during such inspection shall be subject to applicable requirements as to confidentiality which are set forth in regulations prescribed under subsection (c) of this section.

"(e) Prior to transmitting any privileged information to any State, or granting such State access to such information, the Secretary shall enter into a written agreement with the Governor of such State in which such State agrees, as a condition precedent to receiving or being granted access to such information, to waive the defenses set forth in subsection (f)(2) of this section.

"(f)(1) Whenever any employee of the Federal Government or of any State reveals information in violation of the regulations prescribed pursuant to subsection (c) of this section, the lessee or permittee who supplied such information to the Secretary or to any other Federal official, and any person to whom such lessee or permittee has sold such information under promise of confidentiality, may commence a civil action for damages in the appropriate district court of the United States against the Federal Government or such State, as the case may be.

"(2) In any action commenced against the Federal Government or a State pursuant to paragraph (1) of this subsection, the Federal Government or such

State, as the case may be, may not raise as a defense (A) any claim of sovereign immunity, or (B) any claim that the employee who revealed the privileged information which is the basis of such suit was acting outside the scope of his employment in revealing such information.

"(g) Any provisions of State or local law which provides for public access to any privileged information received or obtained by any person pursuant to this Act is expressly preempted by the provisions of this section, to the extent that it applies to such information.

"(h) If the Secretary finds that any State cannot or does not comply with the regulations issued under subsection (c) of this section, he shall thereafter withhold transmittal and deny inspection of privileged information to such State until he finds that such State can and will comply with such regulations.

"(i) The regulations prescribed pursuant to subsection (c) of this section, and the provisions of subsection 552(b)(9) of title 5, United States Code, shall not apply to any information obtained in the conduct of geological or geophysical explorations by any Federal agency (or any person acting under a service contract with such agency) pursuant to section 11 of this Act.

"SEC. 27. FEDERAL PURCHASE AND DISPOSITION OF OIL AND GAS.—(a)(1) Except as may be necessary to comply with the provisions of sections 6 and 7 of this Act, all royalties or net profit shares, or both, accruing to the United States under any oil and gas lease or permit issued or maintained under this Act, shall, on demand of the Secretary, be paid in oil or gas.

"(2) Except as otherwise provided in section 12(b) of this Act, the United States shall have the right to purchase not to exceed 16⅔ per centum by volume of the oil and gas produced pursuant to a lease or permit issued under this Act, at the regulated price, or, if no regulated price applies, at the fair market value at the wellhead of the oil and gas saved, removed, or sold, except that any oil or gas obtained by the United States as royalty or net profit share shall be credited against the amount that may be purchased under this subsection.

"(3) Title to any royalty, net profit share, or purchased oil or gas may be transferred, upon request, by the Secretary to the Secretary of Defense, to the Administrator of the General Services Administration, or to the Administrator of the Federal Energy Administration, for disposal within the Federal Government.

"(b)(1) The Secretary, pursuant to such terms as he determines and in the absence of any provision of law which provides for the mandatory allocation of such oil in amounts and at prices determined by such provision, or regulations issued in accordance with such provision, may offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value any part of the oil (A) obtained by the United States pursuant to any lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a)(2) of this section.

"(2) Whenever, after consultation with the Administrator of the Federal Energy Administration, the Secretary determines that small refiners do not have access to adequate supplies of oil at equitable prices, the Secretary may dispose of any oil which is taken as a royalty or net profit share accruing or reserved to the United States pursuant to any lease issued or maintained under this Act, or purchased by the United States pursuant to subsection (a)(2) of this section, by conducting a lottery for the sale of such oil, or may equitably allocate such oil among the competitors for the purchase of such oil, at the regulated price, or if no regulated price applies, at its fair market value. The Secretary shall limit participation in any lottery or allocated sale to assure such access and shall publish notice of such sale, and the terms thereof, at least thirty days in advance of such sale. Such notice shall include qualifications for participation, the amount of oil to be sold, and any limitation in the amount of oil which any participant may be entitled to purchase.

"(3) Whenever a provision of law is in effect which provides for the mandatory allocation of such oil in amounts or at prices determined by such provision, or regulations issued in accordance with such provision, the Secretary may only sell such oil in accordance with such provision of law or regulations.

"(c)(1) Except as provided in paragraph (2) of this subsection, the Secretary, pursuant to such terms as he determines, may offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value any part of the gas (A) obtained by the United States pursuant to a lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a)(2) of this section.

"(2) Whenever, after consultation with and advice from the Administrator of the Federal Energy Administration and the Chairman of the Federal Power Commission, the Secretary determines that an emergency shortage of natural gas is threatening to cause severe economic or social dislocation in any region of the United States and that such region can be serviced in a practical, feasible, and efficient manner by royalty, net profit share, or purchased gas obtained pursuant to the provisions of this subsection, the Secretary may allocate or conduct a lottery for the sale of such gas, and shall limit participation in any allocated or lottery sale of such gas to any person servicing such region, but he shall not sell any such gas for more than its regulated price, or, if no regulated price applies, less than its fair market value. Prior to allocating any gas pursuant to this paragraph, the Secretary shall consult with the Federal Power Commission.

"(d) The lessee shall take any Federal oil or gas for which no acceptable bids are received, as determined by the Secretary, and which is not transferred pursuant to subsection (a)(3) of this section, and shall pay to the United States a cash amount equal to the regulated price, or, if no regulated price applies, the fair market value of the oil or gas so obtained.

"(e) As used in this section—

"(1) the term 'regulated price' means the highest price—

"(A) at which Federal oil may be sold pursuant to the Emergency Petroleum Allocation Act of 1973 and any rule or order issued under such Act;

"(B) at which natural gas may be sold to natural-gas companies pursuant to the Natural Gas Act and any rule or order issued under such Act; or

"(C) at which either Federal oil or gas may be sold under any other provision of law or rule or order thereunder which sets a price (or manner for determining a price) for oil or gas produced pursuant to a lease or permit issued in accordance with this Act; and

"(2) the term 'small refiner' means an owner of an existing refinery or refineries, including refineries not in operation, who qualifies as a small business concern under the rules of the Small Business Administration and who is unable to purchase in the open market an adequate supply of crude oil to meet the needs of his existing refinery capacities.

"(f) Nothing in this section shall prohibit the right of the United States to purchase any oil or gas produced on the Outer Continental Shelf, as provided in section 12(b) of this Act.

"SEC. 28. LIMITATIONS ON EXPORT.—(a) Except as provided in subsection (d), any oil or gas produced from the Outer Continental Shelf shall be subject to the requirements and provisions of the Export Administration Act of 1969 (50 App. U.S.C. 2401 et seq.).

"(b) Before any oil or gas subject to this section may be exported under the requirements and provisions of the Export Administration Act of 1969, the President shall make and publish an express finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accordance with the provisions of the Export Administration Act of 1969.

"(c) The President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within such time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to such Presidential findings shall cease.

"(d) The provisions of this section shall not apply to any oil or gas which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States.

"SEC. 29. RESTRICTIONS OF EMPLOYMENT.—No full-time officer or employee of the Department of Interior who directly or indirectly discharged duties or responsibilities under this Act, and who was at any time during the twelve months preceding the termination of his employment with the Department compensated under the Executive Schedule or compensated at or above the annual rate of basic pay for grade GS–16 of the General Schedule, shall accept, for a

period of two years after the date of termination of employment with the Department, employment or compensation, directly or indirectly, from any person, persons, association, corporation, or other entity subject to regulation under this Act.

"SEC. 30. FISHERMEN'S GEAR COMPENSATION FUNDS.—(a) As used in this section, the term—

"(1) 'commercial fisherman' means any citizen of the United States whose primary source of income is derived from the harvesting of living marine resources for commercial purposes; and

"(2) 'fishing gear' means (A) any vessel, and (B) any equipment, whether or not attached to a vessel, which is used in the commercial handling or harvesting of living marine resources.

"(b)(1) The Secretary is authorized to establish and maintain a fishermen's gear compensation fund for any area of the Outer Continental Shelf for the purpose of providing reasonable compensation for damages to fishing gear and any resulting economic loss to commercial fishermen due to activities related to oil and gas exploration, development, and production in such area. Such fund may sue or be sued in its own name.

"(2) After the date of enactment of this section, any lease issued by the Secretary to a lessee for a tract in an area of the Outer Continental Shelf shall contain a condition that such lessee, upon request by the Secretary, shall pay the amount specified by the Secretary for the purpose of the establishment and maintenance of a fishermen's gear compensation fund for such area. No lessee shall be required by the Secretary to pay in any calendar year an amount in excess of $5,000 per lease.

"(3) For each fishermen's gear compensation fund established under paragraph (1) of this subsection there shall be established within the Treasury of the United States a revolving account, without fiscal year limitation, which shall be available to such fund to make payments pursuant to this section. Amounts collected by the Secretary under paragraph (2) of this subsection for use by such fund shall be deposited in such revolving account. Amounts in such revolving account shall be available for disbursement and shall be disbursed for only the following purposes:

"(A) Administrative and personnel expenses of such fund.

"(B) The payment of any claim in accordance with procedures established under this section for damages suffered in the area for which such fund was established.

"(4) Each fund established for an area of the Outer Continental Shelf pursuant to this section shall be maintained at a level not to exceed $100,000 and, if depleted, shall be replenished by equal assessments by the Secretary of each lease holder in such area whose lease was issued after the date of enactment of this section.

"(5) Whenever the amount in a revolving account for a fund is not sufficient to pay obligations for which such fund is liable pursuant to this section, such fund may issue, in an amount not to exceed $1,000,000, notes or other obligations to the Secretary of the Treasury, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury may prescribe. Such notes or other obligations shall bear interest at a rate to be determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. Moneys obtained by such fund under this paragraph shall be deposited in the revolving account, and redemptions of any such notes or other obligations shall be made by such fund from the revolving account. The Secretary of the Treasury shall purchase any such notes or other obligations, and for such purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purposes for which securities may be issued under such Act are extended to include any purchase of notes or other obligations issued under this subsection. The Secretary of the Treasury may sell any such notes or other obligations at such times and prices and upon such terms and conditions as he shall determine in his discretion. All purchases, redemptions, and sales of such notes or other obligations by such Secretary of the Treasury shall be treated as public debt transactions of the United States.

"(c)(1) In carrying out this section, the Secretary may—

"(A) prescribe, and from time to time amend, regulations for the filing,

processing, and the fair and expeditious settlement of claims pursuant to this section, including a time limitation on the filing of such claims;

"(B) establish and classify all potential hazards to commercial fishing caused by Outer Continental Shelf oil and gas exploration, development, and production activities, including all obstructions on the bottom, throughout the water column, and on the surface; and

"(C) establish regulations for all materials, equipment, tools, containers, and all other items used on the Outer Continental Shelf to be properly stamped or labeled, wherever practicable, with the owner's identification prior to actual use.

"(2)(A) Payments may be disbursed by the Secretary from the revolving account established for a fishermen's gear compensation fund for any area of the Outer Continental Shelf to compensate commercial fishermen for actual and consequential damages, including loss of profits, due to the damage of fishing gear by materials, equipment, tools, containers, or other items associated with oil and gas exploration, development, or production activities in such area.

"(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, no payment may be made by the Secretary from any revolving account established under this section—

"(i) when the damage set forth in a claim was caused by materials, equipment, tools, containers, or other items the ownership and responsibility for which is known;

"(ii) in an amount in excess of $10,000 per claimant for any incident; and

"(iii) to the extent that damages were caused by the negligence or fault of the commercial fisherman making the claim.

"(d)(1) Upon receipt of any notification of a claim under this section, the Secretary shall refer such matter to a hearing examiner appointed under section 3105 of title 5, United States Code. Upon receipt of any notification of a claim under this section, the Secretary shall notify all lessees in the area and any such lessee may submit evidence at any hearing conducted with respect to such claim. Such hearing examiner shall promptly adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code.

"(2) For the purposes of any hearing conducted pursuant to this section, the hearing examiner shall have the power to administer oaths and subpena the attendance and testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues being presented for determination.

"(3) A hearing conducted under this section shall be conducted within the United States judicial district within which the matter giving rise to the claim occurred, or, if such matter occurred within two or more districts, in any of the affected districts, or, if such matter occurred outside of any district, in the nearest district.

"(4) Upon a decision by the hearing examiner and in the absence of a request for judicial review, any amount to be paid, subject to the limitations of this section, shall be certified to the Secretary, who shall promptly disburse the award. Such decision shall not be reviewable by the Secretary.

"(e) Any person who suffers legal wrong or who is adversely affected or aggrieved by the decision of a hearing examiner under this section may, no later than sixty days after such decision is made, seek judicial review of such decision in the United States court of appeals for the circuit in which the damage occurred, or, if such damage occurred outside of any circuit, in the United States court of appeals for the nearest circuit, or in the United States Court of Appeals for the District of Columbia.

"SEC. 31. DOCUMENTATION, REGISTRY, AND MANNING REQUIREMENTS.—Within six months after the date of enactment of this section, the Secretary of the Department in which the Coast Guard is operating shall by regulation require that any vessel, rig, platform, or other vehicle or structure—

"(1) which is used at any time after the one-year period beginning on the effective date of such regulation for activities pursuant to this Act shall be manned or crewed by citizens of the United States or aliens lawfully admitted to the United States for permanent residence, unless (A) specific contractual provisions or national registry manning requirements in effect on such date of enactment provide to the contrary, or (B) there are not a sufficient number of such citizens or aliens who are qualified and available for such work;

"(2) which is used at any time after the one-year period beginning on the effective date of such regulation for activities pursuant to this Act and which is built or rebuilt at any time after such one-year period, when required to be documented, shall be documented under the laws of the United States; and

"(3) which is used for activities pursuant to this Act, shall comply with such minimum standards of design, construction, alteration, and repair as the Secretary of the Department in which the Coast Guard is operating establishes.".

TITLE III—OFFSHORE OIL SPILL POLLUTION FUND

DEFINITIONS

SEC. 301. As used in this title, unless the context indicates otherwise, the term—

(1) "cleanup costs" means all reasonable and actual costs, including administrative and other costs, to the Federal Government, to any State or local government, or to any foreign government, or to their contractors or subcontractors, of (A) removing or attempting to remove oil discharged from any offshore facility or vessel, or (B) taking other measures to prevent such discharge, or to reduce or mitigate damages to the public health or welfare, or to public property, including shorelines, beaches, and the natural resources of the marine environment;

(2) "damages" means compensation sought pursuant to this title by any person suffering any direct and actual injury proximately caused by the discharge of oil from an offshore facility or vessel, except that such term does not include clean-up costs;

(3) "discharge" includes any spilling, leaking, pumping, pouring, emptying, or dumping, regardless of whether it occurred intentionally or unintentionally;

(4) "offshore facility" includes any oil refinery, drilling structure, oil storage or transfer terminal, or pipeline, or any appurtenance related to any of the foregoing, which is used to drill for, produce, store, handle, transfer, process, or transport oil produced from the Outer Continental Shelf (as the term Outer Continental Shelf is defined in section 2(a) of the Outer Continental Shelf Lands Act (42 U.S.C. 1331(a))), and is located on the Outer Continental Shelf, except that such term does not include (A) a vessel, or (B) a deepwater port (as the term deepwater port is defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502));

(5) "Fund" means the Offshore Oil Pollution Compensation Fund established under section 302(a) of this title;

(6) "owner" means (A) with respect to an offshore facility, any person owning such facility, whether by lease, permit, contract, license, or other form of agreement, (B) with respect to any facility abandoned without prior approval of the Secretary of the Interior, the person who owned such facility immediately prior to such abandonment, and (C) with respect to a vessel, any person owning such vessel;

(7) "operator" means (A) with respect to an offshore facility, any person operating such facility, whether by lease, permit, contract, license, or other form of agreement, and (B) with respect to a vessel, any person operating or chartering by demise such vessel;

(8) "person" means an individual, a public or private corporation, partnership, or other association, or a government entity;

(9) "person in charge" means the individual immediately responsible for the operations of an offshore facility or vessel;

(10) "Secretary" means the Secretary of Transportation;

(11) "revolving account" means the account in the Treasury of the United States which is established under section 302(b) of this title;

(12) "incident" means any occurrence or series of related occurrences, involving one or more offshore facilities or vessels, which cause or pose an imminent threat of oil pollution; and

(13) "vessel" means every description of watercraft or other contrivance, whether or not self-propelled, which is operating in the waters above the Outer Continental Shelf (as the term "Outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (42 U.S.C.

1331(a))), and which is transporting oil directly from an offshore facility, and such term specifically excludes any watercraft or other contrivance which is operating in the navigable waters of the United States (as the term "navigable waters" is defined in section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362)).

ESTABLISHMENT OF THE FUND AND THE REVOLVING ACCOUNT

SEC. 302. (a) There is established within the Department of Transportation an Offshore Oil Production Compensation Fund. The Fund may sue or be sued in its own name.

(b) There is established in the Treasury of the United States a revolving account, without fiscal year limitation, which shall be available to the Fund to carry out the provisions of this title.

PROHIBITION

SEC. 303. The discharge of oil from any offshore facility or vessel, in quantities which the President under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)) determines to be harmful, is prohibited.

NOTIFICATION

SEC. 304. (a) Any person in charge of an offshore facility or vessel shall, as soon as he has knowledge of any discharge of oil from such offshore facility or vessel which may be in violation of section 303 of this title, immediately notify the Secretary of such discharge.

(b) Any person in charge of an offshore facility or vessel who fails to immediately notify the Secretary, as required by subsection (a) of this section, shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both, except that no person convicted under this section shall also be convicted for the same failure to notify under section 311(b)(5) of the Federal Water Pollution Control Act.

(c) Notification received pursuant to this section or information obtained by the exploitation of such notification shall not be used against any person providing such notification in any criminal case, except a prosecution for perjury or for giving a false statement.

REMOVAL OF DISCHARGED OIL

SEC. 305. (a) Whenever any oil is discharged from any offshore facility or vessel in violation of section 303 of this title, the President shall act to remove or arrange for the removal of such oil, unless he determines such removal will be done properly and expeditiously by the owner or operator of such offshore facility or vessel.

(b) Removal of oil and actions to minimize damage from oil discharged shall, to the greatest extent possible, be in accordance with the National Contingency Plan for removal of oil and hazardous substances established pursuant to section 311(c)(2) of the Federal Water Pollution Control Act.

(c) Whenever the President acts to remove a discharge of oil pursuant to this section, he is authorized to draw upon the money available in the revolving account. Such money shall be used to pay promptly for all cleanup costs incurred by the President in removing such oil or in minimizing damage caused by such oil discharge.

DUTIES AND POWERS

SEC. 306. (a) In order to carry out the purposes of this title, the Secretary shall—

(1) administer and maintain the Fund, in accordance with the provisions of this title;

(2) establish regulations and provide for the fair and expeditious settlement of claims, in accordance with section 313 of this title;

(3) provide public access to information, in accordance with section 319(a) of this title;

(4) submit an annual report, in accordance with section 320 of this title; and

(5) perform such other functions as are prescribed by law.

(b) In the performance of his duties under this title, the Secretary is authorized to—

(1) utilize, with the consent of the agency concerned, the services or personnel, on a reimbursable or replacement basis or otherwise, of any Federal Government agency, of any State or local government agency, or of any organization, to perform such functions on behalf of the Fund as are necessary or appropriate;

(2) make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this title;

(3) conduct such studies and investigations, obtain such data and information, and hold such meetings or public hearings as may be necessary or appropriate to facilitate the exercise of any authority granted to, or the performance of any duty imposed on, the Fund under this title;

(4) enter into such contracts, agreements, and other arrangements as are deemed necessary or appropriate for the acquisition of material, information, or other assistance related to, or required by, the implementation of this title; and

(5) issue and enforce orders during proceedings conducted pursuant to this title, including issuing subpenas, administering oaths, compelling the attendance and testimony of witnesses and the production of books, papers, documents, and other evidence, and the taking of depositions.

RECOVERABLE DAMAGES

SEC. 307. Damages may be recovered under this title for—

(1) the value of any loss or injury, at the time such loss or injury is incurred, with respect to any real or personal property which is damaged or destroyed as a result of a discharge of oil;

(2) (A) the cost to the owner of restoring, repairing, or replacing any real or personal property which is damaged or destroyed by a discharge of oil, (B) any income necessarily lost by such owner during the time such property is being restored, repaired, or replaced, and (C) any reduction in the value of such property caused by such discharge;

(3) any loss of income or impairment of earning capacity for a period of not to exceed five years due to damages to real or personal property, or to natural resources, without regard to ownership of such property or resources, which are damaged or destroyed by a discharge of oil, if the claimant derives at least 25 per centum of his earnings from activities which utilize such property or natural resources;

(4) any costs and expenses incurred by the Federal Government or any State government in the restoration, repair, or replacement of natural resources which are damaged or destroyed by a discharge of oil; and

(5) any loss of tax revenue by the Federal Government or any State or local government for a period of not to exceed one year due to injury to real or personal property resulting from a discharge of oil.

CLEANUP COSTS AND DAMAGES

SEC. 308. (a) All cleanup costs incurred by the President, the Secretary, or any other Federal, State, or local official or agency, in connection with a discharge of oil shall be borne by the owners and operator of the offshore facility or vessel from which the discharge occurred.

(b) Notwithstanding any other provisions of law and except as provided in subsection (d) of this section, the owner and operator of an offshore facility shall be held jointly and severally liable, without regard to fault, for damages which result from a discharge of oil from such offshore facility. Such liability shall not exceed $35,000,000, except that if it can be shown that (1) such damages were the result of gross negligence or willful misconduct within the privity of knowledge of such owner or operator, or of the person in charge of such offshore facility, or (2) such discharge was the result of a violation of applicable safety, construction, or operating standards or regulations, such owner and operator shall be jointly and severally liable for the full amount of such damages.

(c) Notwithstanding any other provision of law and except as provided in subsection (d) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for damages which result from a discharge of oil from such vessel. Such liability shall not exceed $150 per gross

registered ton, except that if it can be shown that (1) such damages were the result of gross negligence or willful misconduct within the privity and knowledge of such owner or operator, or of the person in charge of such vessel, or (2) such discharge was the result of a violation of applicable safety, construction, or operating standards or regulations, such owner and operator shall be jointly and severally liable for the full amount of such damages.

(d) No liability shall be imposed under subsection (b) or (c) of this section to the extent the owner or operator establishes that the discharge of oil or that any damages resulting from such discharge were caused by (1) an act of war, or (2) the negligent or intentional act of the damaged party or of any third party (including any government entity).

(e)(1) To the extent that liability is not imposed, pursuant to subsection (d)(2) of this section, on the owner or operator of an offshore facility or vessel for cleanup costs or damages resulting from a discharge of oil from such facility or vessel, the damaged party or third party whose negligent or intentional act caused such discharge or any damages resulting from such discharge shall, if such damaged party or third party is also an offshore facility or vessel, be liable for such cleanup costs or damages to the same extent as if such discharge had occurred from the offshore facility or vessel of such damaged party or third party.

(2) Payment of cleanup costs or damages by the owner or operator of any offshore facility or vessel to any person pursuant to this title shall be subject to such owner or operator acquiring by subrogation all rights of such person to recover such cleanup costs or damages from any other person.

(3) The provisions of this section shall not in any way affect or limit any rights which an owner or operator of an offshore facility or vessel, or the Fund, may have against any third party whose acts may have caused or contributed to a discharge of oil.

(f) Notwithstanding any other provision of this title, no person shall be liable under this title for payment of cleanup costs or damages to any government of a foreign country, or any citizen of a foreign country not a resident of the United States, unless (1) such payment is authorized by a treaty or executive agreement between such country and the United States, or (2) the Secretary of State, in consultation with the Attorney General, certifies that such country provides an adequate and substantially similar remedy for United States claimants for cleanup costs and damages related to discharges of oil produced from the Continental Shelf of such country.

(g) Any owner or operator of any offshore facility or vessel liable for damages to any person pursuant to subsection (b), (c), or (e)(1) of this section shall also be liable to such person for interest on the amount of such damages for which such owner or operator is liable, at the existing commercial interest rate, from the date the claim or amended claims including such damages was presented to the date on which the damages are paid. Such interest shall not be subject to any limitation of liability specified in subsection (b) or (c) of this section.

DISBURSEMENT FROM THE REVOLVING ACCOUNT

SEC. 309. (a) Amounts in the revolving account shall be available for disbursement and shall be disbursed by the Fund for only the following purposes:

(1) Administrative and personnel expenses of the Fund.

(2) Cleanup costs resulting from the discharge of oil which are incurred pursuant to this title or pursuant to any State or local law, and costs of the removal of oil incurred by the owner or operator of an offshore facility or vessel to the extent that the discharge of such oil was caused solely by an act of war or negligence on the part of the Federal Government in establishing and maintaining aids to navigation.

(3) Subject to the provisions of section 313 of this title, all damages not actually compensated pursuant to section 308 (b) or (c) of this title.

(b) Payment of compensation by the Fund shall be subject to the Fund acquiring by subrogation all rights of the claimant to recover cleanup costs or damages from the person responsible for such discharge. The Fund shall diligently pursue recovery for any such subrogated rights.

(c) Notwithstanding any other provision of this section, the Fund shall not be liable to pay (1) cleanup costs and damages of any claimant to the extent that the discharge of oil or any damages resulting from such discharge were caused by the negligent or intentional act of the damaged party, or (2) damages of any claimant to the extent that the discharge of oil or any damages resulting from such discharge were caused by an act of war.

(d) In all claims or actions by the Fund against the owner, operator, or person providing financial responsibility, the Fund shall recover (1) except as otherwise provided in this title, the amount the Fund has paid to the claimant or to any government entity undertaking cleanup operations, without reduction, (2) interest on that amount, at the existing commercial interest rate, from the date upon which the request for reimbursement was issued from the Fund to the owner, operator, or such person, to the date on which the Fund is paid by such owner, operator, or person, and (3) all reasonable and actual administrative costs incurred by the Secretary and disbursed by the Fund in connection with such claim or action, including costs of investigation, processing, hearings, appeals, and collection. Costs recovered pursuant to clause (3) of this subsection shall not be subject to any limitation of liability applicable to such owner, operator, or person providing financial responsibility, under the provisions of subsection (b) or (c) of section 308 of this title.

(e) Whenever the amount in the revolving account is not sufficient to pay cleanup costs and damages for which the Fund is liable pursuant to this section, the Fund may issue, in an amount not to exceed $500,000,000, notes or other obligations to the Secretary of the Treasury, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury may prescribe. Such notes or other obligations shall bear interest at a rate to be determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. Moneys obtained by the Fund under this subsection shall be deposited in the revolving account, and redemptions of any such notes or other obligations shall be made by the Fund from the revolving account. The Secretary of the Treasury shall purchase any such notes or other obligations, and for such purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purposes for which securities may be issued under such Act are extended to include any purchase of notes or other obligations issued under this subsection. The Secretary of the Treasury may sell any such notes or other obligations at such times and prices and upon such terms and conditions as he shall determine in his discretion. All purchases, redemptions, and sales of such notes or other obligations by such Secretary of the Treasury shall be treated as public debt transactions of the United States.

FEE COLLECTION; DEPOSITS IN REVOLVING ACCOUNT

SEC. 310. (a)(1) The Secretary shall levy and the Secretary of the Treasury shall collect a fee of not to exceed 3 cents per barrel on oil obtained from the Outer Continental Shelf, which shall be imposed on the owner of the oil when such oil is produced.

(2) The collection of the fee imposed pursuant to paragraph (1) of this subsection shall continue until the amount in the revolving account totals at least $100,000,000, whereupon imposition of such fee may be suspended by the Secretary. Thereafter, the Secretary shall from time to time and in accordance with the limitation set forth in the first sentence of paragraph (1) of this subsection, modify by regulation the amount of the fee, if any, to be collected under this subsection in order to maintain the revolving account at a level of not less than $100,000,000 and not more than $200,000,000. For purposes of this paragraph, all sums deposited pursuant to subsection (b) of this section shall be included in the calculation of the balance in the revolving account.

(b) All sums received through fee collection, reimbursements, fines, penalties, investments, and judgments pursuant to this title shall be deposited in the revolving account.

(c) All sums not needed for the purposes specified in this title shall be prudently invested in income-producing securities issued by the United States and approved by the Secretary of the Treasury.

FINANCIAL RESPONSIBILITY

SEC. 311. (a) Each owner or operator of an offshore facility shall establish and maintain, under rules and regulations prescribed by the President, evidence of financial responsibility based on the capacity of the offshore facility and other relevant factors. Financial responsibility may be established by any one, or a combination of, the following methods acceptable to the President: (1) evidence

of insurance, (2) surety bonds, (3) qualifications as a self-insurer, or (4) other evidence of financial responsibility satisfactory to the President.

(b) Each owner or operator of a vessel over three hundred gross registered tons (other than a vessel which is not self-propelled and which does not carry oil as cargo or fuel) shall establish and maintain, under rules and regulations prescribed by the Federal Maritime Commission, evidence of financial responsibility based on the liability requirements of this title and the tonnage of the vessel. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one, or combination, of the following methods acceptable to the President: (1) evidence of insurance (2) surety bonds, (3) qualifications as a self-insurer, or (4) other evidence of financial responsibility satisfactory to the President.

(c) Any claim for cleanup costs and damages by any claimant or by the Fund may be brought directly against the surety, the insurer, or any other person providing financial responsibility.

(d) Any person who fails to comply with the provisions of this section or any regulation issued under this section shall be subject to a fine of not more than $25,000.

(e) The President shall adjust the requirements established under this section and the limit of liability under section 308 of this title annually, by an amount equal to the annual percentage change in the wholesale price index.

(f) No owner or operator of an offshore facility or vessel who establishes and maintains evidence of financial responsibility in accordance with this section shall be required under any State law, rule, or regulation to establish any other evidence of financial responsibility in connection with liability for the discharge of oil from such offshore facility or vessel. Evidence of compliance with the financial responsibility requirement of this section shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the discharge of oil from such offshore facility or vessel.

TRUSTEE OF NATURAL RESOURCES

SEC. 312. (a) The President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for damages to such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or the State government.

CLAIMS PROCEDURE

SEC. 313. (a) The Secretary shall prescribe, and may from time to time amend, regulations for the filing, processing, settlement, and adjudication of claims for cleanup costs and damages resulting from the discharge of oil from an offshore facility or vessel.

(b)(1) Whenever the Secretary receives information from any person alleging the discharge of oil from any offshore facility or vessel in violation of section 303 of this title, he shall notify the owner and operator of such offshore facility or vessel of such allegation. Such owner or operator may, within five days after receiving such notification, deny such allegations, or deny liability for damages for any of the reasons set forth in section 308(d) of this title.

(2) Any denial made pursuant to paragraph (1) of this subsection shall be adjudicated in accordance with the provisions of subsection (i) of this section.

(c)(1) If a denial is not made pursuant to subsection (b)(1) of this section, the owner and operator, or the person providing financial responsibility, shall advertise, in accordance with regulations promulgated by the Secretary, in any area where damages may occur, the procedures under which claims may be presented to such owners and operator or such person providing financial responsibility. The Secretary shall publish the text of such advertisement, in modified form if necessary, in the Federal Register. If any person fails to make any advertisement required by this paragraph, the Secretary shall do so and such person shall pay the costs of such advertisement.

(2) If a denial is made pursuant to subsection (b) of this section, the Secretary shall advertise and publish procedures under which claims may be presented to the Secretary for payment by the Fund from the revolving account.

(3) Any advertisement made under this subsection shall commence no later

than fifteen days after the date of the notification and shall continue for a period of no less than thirty days. Such advertisement shall be repeated thereafter in such modified form as may be necessary, but not less frequently than once each calendar quarter for a total period of five years.

(d)(1) Any claim presented to any person under subsection (c)(1) of this section, or to the Secretary for payment from the Fund, shall be presented within one year after date of discovery of any damages for which such claim is made, except that no such claim may be presented after the end of the five-year period beginning on the date on which advertising was commenced pursuant to subsection (c) of this section.

(2) Each person's damage claims arising from one incident which are presented to the Secretary shall be slated in one form, which may be amended to include new claims as they are discovered. Damages which are known or reasonably should be known, and which are not included in the claim at the time compensation is made, shall be deemed waived.

(e)(1) Except as provided in subsection (f) of this section, all claims shall be presented (A) to the owner and operator, or (B) to the person providing financial responsibility.

(2) Any person to whom a claim has been presented pursuant to paragraph (1) of this subsection shall promptly notify the claimant of the rights which such claimant may have under this title and notify the Secretary of receipt of such claim.

(f) The following claims may be presented to the Secretary for payment by the Fund from the revolving account:

(1) Any claim for damages resulting from any discharge with respect to which a denial has been made pursuant to subsection (b)(1) of this section.

(2) Any claim which has been presented to any person pursuant to subsection (c)(1) of this section, if such person—

(A) has not accepted liability for such claim for any reason,

(B) submits to the claimant a written offer for settlement of the claim, which the claimant rejects for any reason, or

(C) has not settled such claim by agreement with the claimant within sixty days after the date on which (i) such claim was presented, or (ii) advertising was commenced pursuant to subsection (c) of this section, whichever date is later.

(g) In the case of a claim which has been presented to any person under subsection (e)(1) of this section, and which may be presented to the Secretary under subsection (f)(2) of this section, such person shall, within two days after a request by the claimant, transmit directly to the Secretary such claim and such other supporting documents as the Secretary may by regulation prescribe, and such claim shall be deemed presented to the Secretary for payment by the Fund.

(h)(1) Except as provided in paragraph (2) of this subsection, the Secretary shall use the facilities and services of private insurance and claims adjusting organizations in administering this section and may contract to pay compensation for such facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, upon a showing by the Secretary that advertising is not reasonably practicable, and advance payments may be made. A payment to a claimant, for a single claim in excess of $100,000, or two or more claims aggregating in excess of $200,000, shall be first approved by the Secretary.

(2) In extraordinary circumstances in which the services of such private organizations are inadequate, the Secretary may use Federal personnel to administer the provisions of this section, to the extent necessitated by such extraordinary circumstances.

(i) The following matters in dispute shall be submitted to the Secretary and adjudicated pursuant to the provisions of this section:

(1) Upon the petition of a claimant, in the case of a claim which has been presented to the Secretary for payment by the Fund, and in which the Secretary—

(A) has, for any reason, denied liability for such claim; or

(B) has not settled such claim by agreement with such claimant within ninety days after the date on which (i) such claim was presented to the Secretary, or (ii) advertising was commenced pursuant to subsection (c)(2) of this section, whichever date is later.

(2) Upon the petition of the owner and operator or the person providing financial responsibility, who is or may be liable for cleanup costs and damages pursuant to section 308 of this title—

(A) any denial made pursuant to subsection (b)(1) of this section;

(B) any objection to an exception to the limit of liability set forth in section 308 (b) or (c) of this title; and

(C) the amount of any payment or proposed payment by the Fund which may be recovered from such owner and operator, or such person providing financial responsibility, pursuant to section 309(d) of this title.

(j)(1) Upon receipt of any matter in dispute submitted for adjudication pursuant to subsection (i) of this section, the Secretary shall refer such matter to a hearing examiner appointed under section 3105 of title 5, United States Code. Such hearing examiner shall promptly adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code.

(2) For purposes of any hearing conducted pursuant to this subsection, the hearing examiner shall have the power to administer oaths and subpena the attendance and testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues presented for determination.

(3) A hearing conducted under this subsection shall be conducted within the United States judicial district within which the matter in dispute occurred, or, if such matter occurred within two or more districts, in any of the affected districts or, if such matter in dispute occurred outside of any district, in the nearest district.

(k) Upon a decision by the hearing examiner and in the absence of a request for judicial review, any amount to be paid from the revolving account shall be certified to the Fund which shall promptly disburse the award. Such decision shall not be reviewable by the Secretary.

JUDICIAL REVIEW

SEC. 314. (a) Any person who suffers legal wrong or who is adversely affected or aggrieved by the decision of a hearing examiner may, no later than sixty days after such decision is made, seek judicial review of such decision (1) in the United States court of appeals for the circuit in which the damage occurred, or, if such damage occurred outside of any circuit, in the United States court of appeals for the nearest circuit, or (2) in the United States Court of Appeals for the District of Columbia.

(b) In any case in which the person responsible for the discharge, or the Fund, seeks judicial review, attorneys' fees and court costs shall be awarded to the claimant if the decision of the hearing examiner is affirmed.

CLASS ACTIONS

SEC. 315. (a) The Attorney General may act on behalf of any group of damaged citizens which the Secretary determines would be more adequately represented as a class in the recovery of claims under this title. Sums recovered shall be distributed to the members of such group, except that the reasonable and actual costs incurred by the Attorney General in representing such class shall be paid out of such sums recovered, and shall be deposited in the Treasury of the United States, and credited to miscellaneous receipts. The Attorney General shall not commence any action under this subsection against the Fund or any other department, agency, or instrumentality of the United States.

(b) If, within ninety days after the discharge of oil in violation of section 303 of this title has occurred, the Attorney General fails to act on behalf of a group who may be entitled to compensation, any member of such group may maintain a class action to recover such damages on behalf of such group. Failure of the Attorney General to act in accordance with this subsection shall have no bearing on any class action maintained in accordance with this subsection.

(c) In any case in which the number of members of the class seeking the recovery of claims under this title exceeds one thousand, publishing notice of the action in the Federal Register and in local newspapers serving the areas in which the damaged parties reside shall be deemed to fulfill the requirement for public notice established by rule 23(c)(2) of the Federal Rules of Civil Procedure.

REPRESENTATION

SEC. 316. The Secretary shall initially request the Attorney General to promptly institute court actions and to appear and represent the Fund for all claims under this title. Unless the Attorney General notifies the Secretary that he will institute such action or will otherwise appear within a reasonable time, attorney appointed by the Secretary shall appear and represent the Fund.

JURISDICTION AND VENUE

SEC. 317. (a) The United States district courts shall have original jurisdiction over all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue shall lie in any district (1) wherein the damage complained of occurred, or, if such damage occurred outside of any district, in the nearest district, or (2) wherein the defendant resides, may be found, or has its principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

ACCESS TO RECORDS

SEC. 318. (a) Each person responsible for contributing to the Fund in accordance with this title shall keep such records and furnish such information as the Secretary shall prescribe in regulations. Collection shall be at such times and in such manner as shall be prescribed in such regulations.

(b) The Secretary shall have access to any books, documents, papers, and records of such person relevant to the administration of this title, and shall undertake regular examinations of and audits on the collection of fees.

(c) The Comptroller General shall have access to any books, documents, papers, records, and other information of any person liable to contribute to the Fund, relevant to the administration of this title, and to all books, documents, papers, records, and other information of the Fund.

PUBLIC ACCESS TO INFORMATION

SEC. 319. (a) Copies of any communication, document, report, or information transmitted between any official of the Federal Government and any person concerning liability and compensation for damages resulting from the discharge of oil from an offshore facility or vessel shall be made available to the public for inspection, and shall be available for the purpose of reproduction at a reasonable cost, to the public upon identifiable request.

(b) Nothing contained in this section shall be construed to require the release of any information of the kind described in subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

ANNUAL REPORT

SEC. 320. Within six months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives (1) a report on the administration of the Fund during such fiscal year, (2) a summary of the management and enforcement activities of the Fund, and (3) recommendations to the Congress for such additional legislative authority as may be necessary to improve the management of the Fund and the administration of the liability provisions of this title.

AUTHORIZATION OF APPROPRIATIONS

SEC. 321. (a) There is authorized to be appropriated for the administration of this title $10,000,000 for the fiscal year ending September 30, 1978, $5,000,000 for the fiscal year ending September 30, 1979, and $5,000,000 for the fiscal year ending September 30, 1980.

(b) There are also authorized to be appropriated to the Fund from time to time such amounts as may be necessary to carry out the purposes of the applicable provisions of this title, including the entering into contracts pursuant to section 306(b)(4) of this title, any disbursements of funds pursuant to section 309(a) of this title, and the issuance of notes or other obligations pursuant to section 309(e) of this title.

(c) Notwithstanding any other provision of this title, the authority to make contracts pursuant to section 306(b)(4) of this title, to make disbursements pursuant to section 309(a) of this title, to issue notes of other obligations pursuant to section 309(e) of this title, and to charge and collect fees pursuant to section 310(a) of this title shall be effective only to the extent provided, without fiscal year limitation, in appropriation Acts enacted after the date of enactment of this title.

(d) There are hereby authorized to be appropriated to the Fund such sums as may be necessary to reimburse the Fund for amounts paid for cleanup costs and damages in connection with discharges of oil caused by the negligent or intentional act of any department, agency, or instrumentality of the United States.

RELATIONSHIP TO OTHER LAW

SEC. 322. (a) Except as otherwise provided in this title, this title shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil resulting in damages or cleanup costs within the jurisdiction of any State.

(b) Any person who receives compensation for damages or cleanup costs pursuant to this title shall be precluded from recovering compensation for the same damages or cleanup costs pursuant to any other State or Federal law. Any person who receives compensation for damages or cleanup costs pursuant to any other State or Federal law shall be precluded from receiving compensation for the same damages or cleanup costs under this title.

TITLE IV—AMENDMENTS TO THE COASTAL ZONE MANAGEMENT ACT OF 1972

AMENDMENTS TO THE COASTAL ZONE MANAGEMENT ACT OF 1972

SEC. 401. (a) Paragraph (2) of section 308(b) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456a(b)(2)) is amended—

(1) by striking out "The amounts" and inserting in lieu thereof "Subject to paragraph (3) of this subsection, the amounts";

(2) by striking out "(A), (B), (C), and (D)" and inserting in lieu thereof "(A) and (B)";

(3) in subparagraph (A), by striking out "one-third" and inserting in lieu thereof "one-half";

(4) by striking out subparagraph (B);

(5) by relettering subparagraph (C), and any references thereto, as subparagraph (B), and by striking out "one-sixth" in such subparagraph and inserting in lieu thereof "one-half"; and

(6) by striking out subparagraph (D).

(b) Such section 308(b) is amended—

(1) by renumbering paragraphs (3) through (5), and any references thereto, as paragraphs (4) through (6), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:

"(3)(A) The Secretary shall not make grants under this subsection to any state in any fiscal year the total of which exceeds 30 per centum of the total amount available to the Secretary for payment to all states in such fiscal year.

"(B)(i) If, in any fiscal year, any coastal state will not receive a grant under subparagraph (A) or (B) of paragraph (2), the Secretary shall make a grant to such coastal state in an amount equal to 2 per centum of the total amount available for making grants to all states under such paragraph (2) in such fiscal year if any other coastal state in the same region is receiving a grant under either such subparagraph in such fiscal year.

"(ii) For purposes of this subparagraph—

"(I) the states of Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia (the Atlantic coastal states) shall constitute one 'region';

"(II) the states of Alabama, Florida, Louisiana, Mississippi, and Texas (the Gulf coastal states) shall constitute one 'region';

"(III) the states of California, Oregon, and Washington (the Pacific coastal states) shall constitute one 'region'; and

"(IV) the state of Alaska shall constitute one 'region'.

"(C) If, in any fiscal year, the total amount of funds available for making grants to coastal states pursuant to this subsection is greater than the total amount of grants payable to such states pursuant to this subsection, the difference between such two amounts shall remain in the Treasury of the United States and be credited to miscellaneous receipts.

"(D) If, in any fiscal year, the total amount of funds available for making grants to coastal states pursuant to this subsection is less than the total amount of grants payable to all coastal states pursuant to this subsection, there shall be deducted from the amount payable to each coastal state an amount equal to the product of—

"(i) the amount by which the total amount of grants payable to all coastal states exceeds the total amount of funds available for such grants; multiplied by

"(ii) a fraction, the numerator of which is the amount of grants payable to such coastal state in such fiscal year and the denominator of which is the total amount of grants payable to all coastal states in such fiscal year.".

(c) Paragraph (5)(B)(i) of such section 308(b) (as renumbered by subsection (b) of this section) is amended—

(1) by striking out "necessary, because of the unavailability of adequate financing under any other subsection," and inserting in lieu thereof "necessary"; and

(2) by striking out "new or expanded".

(d) Paragraph (6) of such section 308(b) (as renumbered by subsection (b) of this section) is amended to read as follows:

"(6) After making the calculations provided in paragraphs (2) and (3) of this subsection, the Secretary shall require each coastal state which is to receive grants under this subsection to provide adequate assurances of being able to return to the United States any funds to which paragraph (8) of this subsection may apply. After obtaining such assurances, the Secretary shall disburse the proceeds of such grants to such coastal state.

"(7) Any coastal state which receives proceeds of any grant under this subsection only may expend or commit such proceeds—

"(A) after a determination by the Secretary that such proceeds will be expended or committed by such state in accordance with the purposes set forth in paragraph (5) of this subsection; and

"(B) before the close of the fiscal year immediately following the fiscal year in which the proceeds were received.

"(8) The United States shall be entitled to recover from any coastal state an amount equal to all or any portion of a grant made to such state under this subsection which is not expended or committeed in compliance with paragraph (7) of this subsection.".

(e) Paragraph (3) of section 318(a) of the Coastal Zone Management Act of 1972 is amended to read as follows:

"(3) such sums, not to exceed $50,000,000 for the fiscal year ending September 30, 1978, and not to exceed $125,000,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, September 30, 1982, September 30, 1983, and September 30, 1984, as may be necessary for grants under section 308(b);".

(f) The amendments made by this section shall take effect on October 1, 1977.

TITLE V—MISCELLANEOUS PROVISIONS

REVIEW OF SHUT-IN OR FLARING WELLS

SEC. 501. (a) In a report submitted within six months after the date of enactment of this Act, and in his annual report thereafter, the Secretary shall list all shut-in oil and gas wells and wells flaring natural gas on leases issued under the Outer Continental Shelf Lands Act. Each such report shall be submitted to the Comptroller General and shall indicate why each well is shut-in or flaring natural gas, and whether the Secretary intends to require production on such a shut-in well or order cessation flaring.

(b) Within six months after receipt of the Secretary's report, the Comptroller General shall review and evaluate the methodology used by the Secretary in allowing the wells to be shut-in or to flare natural gas and submit his findings and recommendations to the Congress.

REVIEW AND REVISION OF ROYALTY PAYMENTS

SEC. 502. As soon as feasible but no later than ninety days after the date of enactment of this Act, and annually thereafter, the Secretary of the Interior shall submit a report or reports to the Congress describing the extent, during the two-year period preceding such report, of delinquent royalty accounts under leases issued under any Act which regulates the development of oil and gas on Federal lands, and what new auditing, post-auditing, and accounting procedures have been adopted to assure accurate and timely payment of royalties and net profit shares. Such report or reports shall include any recommendations for corrective action which the Secretary of the Interior determines to be appropriate.

NATURAL GAS DISTRIBUTION

SEC. 503. The Federal Power Commission shall, pursuant to its authority under section 7 of the Natural Gas Act, permit any natural gas distributing company which engages, directly or indirectly, in development and production of natural gas from the Outer Continental Shelf to transport to its service area for distribution any natural gas obtained by such natural gas distributing company from such development and production. For purposes of this section, the term "natural gas distributing company" means any person (1) engaged in the distribution of natural gas at retail, and (2) regulated or operated as a public utility by a State or local government.

ANTIDISCRIMINATION PROVISIONS

SEC. 504. Each Federal agency or department given responsibility for the promulgation or enforcement of regulations under this Act or the Outer Continental Shelf Lands Act shall take such affirmative action as deemed necessary to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving or participating in any activity, sale, or employment conducted pursuant to the provisions of this Act or the Outer Continental Shelf Lands Act. The agency or department shall promulgate such rules as it deems necessary to carry out the purposes of this section, and any rules promulgated under this section, through agency and department provisions and rules which shall be similar to those established and in effect under title VI of the Civil Rights Act of 1964.

SUNSHINE IN GOVERNMENT

SEC. 505. (a) Each officer or employee of the Department of the Interior who—

(1) performs any function or duty under this Act or the Outer Continental Shelf Lands Act, as amended by this Act; and

(2) has any known financial interest in any person who (A) applies for or receives any permit or lease under, or (B) is otherwise subject to, the provisions of this Act or the Outer Continental Shelf Lands Act,

shall, beginning on February 1, 1978, annually file with the Secretary of the Interior a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) The Secretary of the Interior shall—

(1) within ninety days after the date of enactment of this Act—

(A) define the term "known financial interest" for purposes of subsection (a) of this section; and

(B) establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) In the rules prescribed in subsection (b) of this section, the Secretary may identify specific positions within the Department of the Interior which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Any officer or employee who is subject to, and knowingly violates, this section shall be fined not more than $2,500 or imprisoned not more than one year, or both.

INVESTIGATION OF AVAILABILITY OF OIL AND NATURAL GAS FROM THE OUTER CONTINENTAL SHELF

SEC. 506. (a) The Congress hereby finds that—

(1) there is a serious lack of adequate basic energy information available to the Congress and the Secretary of the Interior with respect to the availability of oil and natural gas from the Outer Continental Shelf;

(2) there is currently an urgent need for such information;

(3) the existing collection of information by Federal departments and agencies relevant to the determination of the availability of such oil and natural gas is uncoordinated, is jurisdictionally limited in scope, and relies too heavily on unverified information from industry sources;

(4) adequate, reliable, and comprehensive information with respect to the availability of such oil and natural gas is essential to the national security of the United States; and

(5) this lack of adequate reserve data requires a reexamination of past data as well as the acquisition of adequate current data.

(b) The purpose of this section is to enable the Secretary of the Interior and the Congress to gain the best possible knowledge of the status of Outer Continental Shelf oil and natural gas reserves, resources, productive capacity, and production available to meet current and future energy supply emergencies, to gain accurate knowledge of the potential quantity of oil and natural gas resources which could be made available to meet such emergencies, and to aid in establishing energy pricing and conservation policies.

(c) The Secretary of the Interior shall conduct a continuing investigation, based on data and information which he determines has been adequately and independently audited and verified, for the purpose of determining the availability of all oil and natural gas produced or located on the Outer Continental Shelf.

(d) The investigation conducted pursuant to this section shall include, among other items—

(1) an independent determination of the MER (maximum efficient rate) and MPR (maximum production rate) in relation to the actual production from the fields, reservoirs, and wells on the Outer Continental Shelf commencing with production during the twelve-month period immediately prior to the date of enactment of this section, and an independent estimate indicating whether production from such fields, reservoirs, and wells has been less then the maximum efficient rate and maximum production rate, and, if so, the reason for such difference;

(2) an independent estimate of total discovered reserves (including proved and indicated reserves) and undiscovered resources (including hypothetical and speculative resources) of Outer Continental Shelf oil and natural gas by fields and reservoirs;

(3) a determination of the utilization of Outer Continental Shelf oil and natural gas in terms of end-use markets so as to ascertain the consumption by different classes and types of end users;

(4) the relationship of any and all such information to the requirements of conservation, industry, commerce, and the national defense; and

(5) an independent evaluation of trade association estimates of Outer Continental Shelf reserves, ultimate recovery, and productive capacity since 1965 which shall be accompanied by a detailed description of procedures used by such associations and the manner in which their data relates to the results yielded in the investigation under this section. In order to provide maximum opportunity for evaluation and continuity, the Secretary of the Interior shall obtain all of the available data and other records which the trade associations have used in compiling their data with respect to reserves.

(e) The Secretary of the Interior shall not later than six months after the date of enactment of this section, submit an initial report to the Congress on the results of the continuing investigation required under this section and shall submit subsequent reports annually thereafter. The initial report shall include cost estimates for the separate components of the continuing investigation and a time schedule for meeting all of its specifications. The schedule shall provide for producing all the required information within a year after the date of enactment of this section. The Secretary of the Interior shall make separate reports on past data as follows:

(1) within six months after the date of enactment of this section, on the acquisition and details of trade association data and information; and

(e) within twelve months after such date, an evaluation of the trade association materials, and within eighteen months after such date, the relationship between trade association data and the new data collected under this section.

(f) The Secretary of the Interior shall consult with the Federal Trade Commission regarding categories of information acquired pursuant to this section. Notwithstanding any other provision of law, the Secretary of the Interior shall, upon request of the Federal Trade Commission, make available to such Commission any information acquired under this section.

(g) For purposes of this section, the term "Outer Continental Shelf" has the meaning given such term in section 2(a) of the Outer Continental Shelf Lands Act.

STATE MANAGEMENT PROGRAM

SEC. 507. Section 307(c)(3)(B)(ii) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(B)(ii)) is amended to read as follows:

"(ii) concurrence by such state with such certification is conclusively presumed as provided for in subparagraph (A), except that the time period after which such concurrence shall be presumed shall be three months; or".

RELATIONSHIP TO EXISTING LAW

SEC. 508. Except as otherwise expressly provided in this Act, nothing in this Act shall be construed to amend, modify, or repeal any provision of the Coastal Zone Management Act of 1972, the National Environmental Policy Act of 1969, the Mining and Mineral Policy Act of 1970, or any other Act.

I. SUMMARY OF KEY PROVISIONS OF H.R. 1614

A. H.R. 1614 AND THE SECRETARY OF THE INTERIOR

H.R. 1614 vests new and increased responsibility in the Secretary of the Interior. Specific purposes, policies and findings detail that this power is to be used to provide for rational management of the oil and gas resources of the Outer Continental Shelf. National energy requirements, affected states' needs, environmental protection, alternate uses of the coastal waters and lands, and economic reality, are all to be taken into account.

The new Secretary of the Interior has stated that he desires the specific mandates, guidelines and authority provided by H.R. 1614. By his actions, he has indicated his ability to properly undertake the responsibilities for modern Outer Continental Shelf management.

The Secretary must first develop a comprehensive leasing program. In accordance with a new section 18 of the Outer Continental Shelf Lands Act, the Secretary has 9 months in which to prepare the leasing program, indicating size, timing, and location of leasing activities for the next 5 years. He must review the program annually and update it as necessary. The timing and location of the leasing are to be based on a balance of an assessment of environmental damage, discovery potential, and impact on the coastal zone.

The Secretary must submit this plan to the Attorney General, who shall submit comments on the effects of such a program on competition; and to States, local governments, and other persons, who may submit comments or recommendations with regard to any aspect of the program. The plan is then transmitted to the Congress, with all comments. All specific recommendations received must be accepted by the Secretary, unless he indicates specifically why they are not being accepted. Once a leasing program has been approved, all leasing is to be in accordance with the program.

The Secretary can then award leases to bidders. At present, the cash bonus system is used almost exclusively. Under that system, in order to win a lease, a company must have vast amounts of capital, and the price to the company is set without full knowledge of the value of the oil and gas in the area. This may reduce competition for offshore leases to the major oil companies and reduce the public return for resources. To increase competition for off-shore leases and secure higher returns to the public Treasury, section 8 of the Outer Continental Shelf Lands Act has been amended to allow the Secretary to use other bidding methods based on net profits; royalty; or work commitments stated in dollar amounts. The Secretary is required to choose the new bidding systems in at least 50 percent of all lease sales in frontier areas during the next 5 years. If, however, the Secretary finds that he must use the present system for more than 50 percent of the lease sales in order to promote efficient development or competition, he must submit a report to the Congress, and either House can pass a resolution of disapproval within thirty days and thus preclude him from exceeding that limitation.

Other provisions prohibit joint bids among major producers; allow leases to be for a reasonable production unit; and provide for lease periods of 5 years, or under specific circumstances, for 10 years, and then extensions once there is a discovery. In order to insure competition, and provide for rational use of bidding systems, rules and regulations as to the systems and lease sales must be promulgated in advance, and a random selection method used to select areas where new bidding systems are to be used, with certain exceptions.

Such rules, and the random selection procedure are to be public. The Attorney General and the Federal Trade Commission are to specifically comment on such rules.

To manage activities on a lease, the Secretary of the Interior is to issue regulations to enforce the Act. Section 204 of the bill amends section 5 of the Act to mandate provisions for the issuance of regulations dealing with the temporary suspension of activities on a lease, as well as for the cancellation of a lease based on a balancing of risks and benefits. Cancellation or termination is also permitted, and sometimes required, for failure to comply with law, lease terms, or applicable regulations.

To allow oversight by the Congress, the Secretary of the Interior is to file an annual report to the Congress within 6 months after the end of each fiscal year on the OCS leasing and production program. Section 207 of the bill amends section 15 of the Act to require this annual report to include a detailed accounting of all monies; a detailed accounting of all activities; a summary of management, supervision, and enforcement activities; a list of all shut-in and flaring wells; and recommendations to the Congress for improvements in management, safety, amount of production, and resolution of jurisdictional disputes.

In addition, the Secretary is to submit a report, after consultation with the Attorney General, with recommendations for promoting competition, and containing an evaluation of the various bidding systems; why a particular bidding system has not been utilized; an evaluation of alternative bidding systems not authorized by the Act; an evalua-

tion of joint bidding restrictions in promoting competition; and an evaluation of any measures to increase the supply of oil and gas to independent refiners and distributors.

B. H.R. 1614 AND THE BUREAUCRACY

Although primary responsibility for OCS supervision is given to the Secretary of the Interior, certain responsibilities are given to other agencies and Departments. For example, Coast Guard, the Army, OSHA, and the Office of Pipeline Safety are granted authority, and with this authority the responsibility, for promulgation and enforcement of certain regulations. Of course, other agencies and departments have responsibilities under other laws for OCS and OCS-related activity. One key function of H.R. 1614 is to provide for coordinated Federal action, by limiting duplication of effort, overregulation, and conflicting standards. Thus, the leasing program required by section 18 is to be prepared and promulgated after extensive consultation with other agencies. Regulations, and enforcement of those regulations are required to be after necessary consultation and are to be coordinated.

Preparation of reports, environmental assessments, environmental impact statements, and resource information are to be cooperatively undertaken and generally coordinated under the leadership of the Secretary of the Interior. Information prepared by one agency, or expertise developed by another, are to be used to the maximum extent possible to limit costs and avoid delays. Permits, licenses and leasing requirements are to be coordinated to facilitate "one-stop" shopping by those involved in OCS activities. The Secretary of the Interior is to prepare a compilation of all regulations, from whatever source, to facilitate a total comprehension of the OCS regulatory structure.

In addition, H.R. 1614 includes provisions to increase public confidence in governmental activity. More information is to be provided and increased participation granted to states and citizens as to OCS activity at all stages in the planning, leasing, regulatory, and enforcement process.

Potential conflicts of interests are limited by requirements for financial disclosure and by restrictions on future employment by supervising government personnel.

C. H.R. 1614 AND THE ENERGY INDUSTRY

Lessees and permittees will face more and stricter regulations and enforcement as a result of this legislation. However, they will also enjoy less red tape, fewer delays, and greater certainty about the political environment in which they are operating. In addition, certain elements of the energy industry will be assured a larger role in OCS activities.

As described above, industry complaints about "overregulation" should be reduced by H.R. 1614 and its provisions providing for coordination and facilitating "one-stop" shopping. In addition, specific provisions have been included in the bill to eliminate unnecessary delays.

While a new leasing program is being prepared and promulgated, leasing activities are to continue. Environmental studies are generally

to be conducted before or while exploration activities are conducted. Retroactive regulations are not permitted if they cause undue delay and are not essential. Requirements for exploration plans, and development and production plans are generally limited to unexplored areas and are not applicable to activities already commenced or approved. In general, the natural stages of the OCS process are used, and the increased and updated requirements applied, so as to limit undue interference and delays.

Private energy companies will continue to be the major explorers for oil and gas, and the developers and producers of these resources.

Section 206 amends section 11 of the OCS Lands Act, but includes the original language of section 11, which allowed geological and geophysical explorations to be conducted by any agency of the United States or any person authorized by the Secretary.

This language, which has been part of the law for twenty-three years, means that the federal government can, as now, allow exploration pursuant to a lease, permit, or regulation, conduct exploration itself, or contract out for exploration to be done by private industry prior to a lease sale. New language has been added that would require the Secretary, at least once in the next 2 years, to offer qualified applicants an opportunity to conduct on-structure stratigraphic drilling, prior to a lease sale. If no private company wishes such a permit, such drilling will not occur. In addition, existing procedures for stratigraphic drilling, on- or off-structure, are readopted.

A company which has obtained a lease must submit an exploration plan for approval by the Secretary before it may proceed with its exploration activities. The exploration plan is to include a schedule of activities, a description of the equipment to be used, the general location of each well to be drilled, and other information as required by the Secretary. The Secretary must review the plan to see if it is in accordance with the law, regulations prescribed under the Act, and the provisions of the lease. The Secretary has 30 days to approve or modify such a plan, but may delay approval if he believes a suspension of activities on the lease is warranted.

A company which has obtained a lease must also submit a development and production plan in accordance with a new section 25 of the OCS Act, prior to beginning development and production of the oil and gas covered in the lease. This plan must describe the specific work to be performed, all offshore facilities and operations proposed by the lessee or known by him, environmental and safety protections, the rate of development and production, a time schedule for performance, and other relevant information. In addition, a lessee is to prepare a statement describing all facilities and operations, other than on the Outer Continental Shelf, proposed and known by him which will be constructed or utilized in development and production of oil and gas from a lease area, including the location and site of such facilities, the land, labor, material and energy requirements, and all environmental and safety protections.

The plan then goes through a review procedure by the Governors, and any other interested party. This review process utilizes the natural pause that now occurs between a discovery and the decision to develop and produce. During this period, companies presently take periods up to 18 months or 2 years to plan future activity, order and secure

platforms, and make on-shore arrangements. The Secretary must finally approve, disapprove, or require modifications of the plan.

While these requirements are fundamental to an updated OCS law, they are not new or untested. Present regulations require submission of exploration and "d and p" plans. Moreover, these provisions, and others in the bill, are not unduly restrictive. It is expected that most problems will be resolved through the review and approval process. Good faith by all parties will insure smooth step-by-step progress. As noted earlier, these requirements are generally applicable to new leases in previously undeveloped areas. Industry will then have adequate time to prepare for and comply with, appropriate procedures. Finally, if a lessee loses a lease through no fault, he is assured by H.R. 1614, as he is not necessarily now, of adequate and known compensation.

H.R. 1614 also provides new opportunities to the energy industry. In general, state and public participation will increase the knowledge, and reduce the fears, of exploitation opponents. Revised procedures will limit frivolous lawsuits, and expedite all court actions. Cooperation, and thus more certainty, will be provided.

Finally, many elements of the energy industry will now have an opportunity for involvement in OCS activities. New bidding systems, reducing the need for large up front bonus payments, should allow more companies to secure OCS leases and allow all companies to use capital to explore resources. Review of actions, leases, and other activities by the Attorney General and in certain instances, the Federal Trade Commission should increase the probability of real competition and thus involvement by more energy companies. Provisions for distribution of royalty, net profit share, or purchased oil, and for a set-aside of all oil, to smaller refiners may well mean the survival of those companies. Specific procedures for distribution of natural gas, whether by royalty or net profit share, or by a lessee, will allow gas companies to participate in OCS activities.

D. H.R. 1614 AND STATE AND LOCAL GOVERNMENTS

A major purpose of H.R. 1614 is to involve the states and affected local areas within the States in the entire exploitation process to a greater degree. The bill provides an opportunity for them to participate in the decisionmaking process with regard to the overall leasing program of the Secretary, and individual development and production plans of the oil companies. The States and local areas are also supplied with information so that they will be able to plan for and ameliorate the on-shore consequences of off-shore development, and with assistance in coping with the on-shore impacts of such development. Involving States in the process from the beginning should avoid time-consuming lawsuits later.

A new section 18 of the OCS Act requires a 5-year leasing program that must be prepared with, and then submitted to, the States and local governments for review.

Specific input is also required for certain key OCS decisions. All recommendations by a Governor of an affected State, and through Governors, heads of affected local government units, with regard to a proposed lease sale or a proposed development and production plan must be submitted within 60 days and must be accepted by the Secretary if he determines that they are consistent with the national interest

In addition, under the new section 25, modifications and approvals of the development and production plans must be, to the extent possible, consistent with approved state coastal zone management programs.

A new section 26 details an Outer Continental Shelf Oil and Gas Information Program. All lessees and permittees must provide access to the Secretary to all data obtained from their offshore activities and must provide copies of any specific data and interpretation as the Secretary may require. After the Secretary has obtained, processed, analyzed and interpreted this data, he shall make available to affected States a summary of data to assist them in planning for onshore impacts. That summary shall include estimates of reserves, size and timing of development if any, location of pipelines, and location and nature of onshore facilities. In addition, he is to allow access by a state Governor's representative to all information, including proprietary data, after a lease sale, under appropriate arrangements for confidentiality.

Title IV of the bill amends the Coastal Zone Management Act to provides $125,000,000 to OCS affected States, based on a formula that seeks to insure that all such States receive funds, that no one State secures too much, and that States will be compensated in relation to real impact.

One final provision which affects some states deals with the leasing of tracts within three miles of the seaward boundary of any coastal state. Section 205 of the bill, which amends section 8 of the Act, states that prior to the leasing of any lands within three miles of the seaward boundary of any coastal state, the Secretary is to provide relevant information to the Governor of the affected state and to offer the Governor the opportunity to enter an arrangement for the special leasing of any such area which might contain a geological structure or trap common to both State and Federal lands. If the Governor accepts, the area is to be so leased. If the Governor refuses, the Secretary may go ahead and lease the area without any special arrangements. In either event, all bonuses, royalties, rents and other revenues are to be placed in an escrow fund until geological information allows the Secretary and the Governor of the affected coastal state to determine the proper allocation of payments.

E. H.R. 1614 AND THE ENVIRONMENT

There are many provisions under H.R. 1614 for the protection of the marine, coastal, and human evironment.

A new section 20 requires studies to obtain baseline information and then to monitor areas. The Interior Department, using the National Oceanic and Atmospheric Administration within the Department of Commerce, to the maximum degree practicable, must prepare a study on any area or region included in a lease sale. These studies are to be used in determining approval of any development and production plan, and are to attempt to predict impacts on the marine biota from OCS activities, and possible spills.

Section 25 of the Act provides for a review of activities after exploration and prior to development and production. An environmental impact statement and a hearing is mandated in previously undeveloped regions to occur at least once in every major lease area prior to ap-

proval of development and production. Through an environmental impact statement procedure, or a set period for comments and recommendations, where no such process is involved, section 25 insures input from Governors, local governments, and other persons into the decision on whether to approve a development and production plan. If the plan cannot be made safe, then the plan is to be disapproved by the Secretary.

Other provisions of the bill provide for suspensions and cancellations for environmental reasons; of course, with adequate compensation for a cancellation.

In general, the whole OCS process, from preparation of a leasing program, selection of tracts for leasing, promulgation and enforcement of regulations, and review of activities must consider environmental consequences—to the waters, to the air, to adjacent coastal areas, and to the living resources.

F. H.R. 1614 AND THE WORKER

The new section 21 of the Act provides for a review of safety and environmental regulations. Regulations should require on all new drilling and production operations, and when practicable, on existing operations, the best available and safest technology economically achievable.

The Secretary of Labor is to issue interim regulations related to hazardous activities in or on the waters above the Outer Continental Shelf.

The new section 22 of the Act provides for enforcement of these safety and environmental regulations. Regular unannounced inspections are mandated, as well as investigations of death, serious injuries, major fires, and oil spills, and review of allegations and complaints by any person.

Finally, a new section 31 provides for increased use of American workers in OCS activities. Manning, registration and documentation requirements are established to provide not only for safe operations but also for use of American and not foreign personnel.

G. H.R. 1614 AND THE CITIZEN

Through the new section 23, citizen suits are authorized by anyone having an interest that can be adversely affected against the relevant government agency or department, or against any other person, for a violation of the Act, implementing regulations, or terms of a lease or permit.

Remedies and penalties for violations of the Act, lease terms, or applicable regulations, are set out in the new section 24 of the Act.

Title III of the Act establishes an Offshore Oil and Pollution Fund and provides for procedures in the event of an oil spill and compensation for damages resulting from such an oil spill. The provisions of this title apply to spills from any offshore facility in the OCS, and any transportation device, including vessels, for the oil and gas from the offshore facility.

Procedures are established for the clean-up of spills, and the lessee or operator of the vessel is to be strictly liable for all clean-up costs. With limited exceptions, the lessee or operator is also strictly liable

for all damages resulting from a spill up to $35 million and the new fund liable for damages beyond that amount.

Finally, a new section 30 provides for the establishment of a fund to compensate fishermen whose activities, or gear, may be damaged by OCS activities.

II. Purposes of the Legislation

H.R. 1614, will amend the Outer Continental Shelf Lands Act of 1953 to provide a new statutory regime for the management of the oil and natural gas resources of the Outer Continental Shelf. It will expedite the systematic development of the OCS, while protecting our marine and coastal environment.

The United States is becoming increasingly dependent on foreign sources of oil. This dependence must be reduced. When the Select Committee began its work almost 2½ years ago, the United States was importing approximately 35 percent of the oil it consumed. Since then the level of our imports has steadily risen, and the Nation is now obtaining about 50 percent of its oil from foreign sources. For example, since the 1973 embargo, the share of U.S. oil imports supplied from the Middle East has increased from 14 percent to 36 percent. Because of this level of imports, the Nation's economy remains vulnerable to another oil embargo, which would cause severe internal dislocations. Our payments for foreign oil constitute a continuing threat to the maintenance of a favorable international balance of payments. Finally, reliance on foreign oil may also risk our ultimate national security. The basic purpose of H.R. 1614 is to promote the swift, orderly and efficient exploitation of our almost untapped domestic oil and gas resources in the Outer Continental Shelf. During the 1980's, oil and gas development on the OCS is likely to be one of the single largest sources of additional domestic energy, and at a lower expense than most alternatives in terms of development and impact costs.

Development of our OCS resources will afford us needed time—as much as a generation—within which to develop alternative sources of energy before the inevitable exhaustion of the world's traditional supply of fossil fuels. It will provide time to bring on-line, and improve energy technologies dealing with, solar, geothermal, oil shale, coal gasification and liquefaction, nuclear, and other energy forms.

The OCS Lands Act of 1953 has never really been amended and is outmoded. No legislation exists for coordination and compensation for injury to other users of the OCS besides the oil and gas industry. No comprehensive national legislation presently exists for responsibility and liability for the effects of oil pollution resulting from activities on the Shelf. In addition, specific mechanisms are needed to involve states, and local governments within states, in all OCS decisions. When consideration of the predecessor bill (H.R. 6218) to H.R. 1614 began, no statute provided for consultation with, and funds for, states which can be adversely impacted by activities on the Shelf. Since that time with the passage of the Coastal Zone Management Act of 1976, the planning capacities of the coastal States have been enhanced by some Federal funds and planning assistance. However, OCS decisionmaking is not limited in effect to coastal zone policies and far more financing is needed in order to ameliorate the undue burdens which can be expected to strain the public services and economic

infrastructures of affected States. Finally, only vague legislation exists as to balancing of resource needs, environmental quality, and long term energy policies. The purpose of H.R. 1614, by requiring development of an OCS plan, establishing new management and regulatory requirements, mandating coordination with affected States, and providing compensation for damage to fishermen's gear, for spills and for adverse impacts, is to cure these defects.

The lands of the Outer Continental Shelf that extend beyond 3 miles from our coastline belong to the Federal Government, (except where court decisions have recognized that Texas and Florida have jurisdiction for three marine leagues off their coasts in the Gulf of Mexico), and it has historically leased these lands to private industry for the exploration and development of the energy resources that lie beneath them. The leases have been awarded by auction, traditionally on the basis of cash bonus bids. With the present shortage of investment capital that will prevail for many years, increasing risks of uncertainty, and the increasing integration and concentration of energy industries, there is now doubt whether cash bonus bidding remains the best system for the future. One purpose of H.R. 1614, is to authorize alternative leasing arrangements and require experimentation with them. It will enable the Secretary of the Interior, who administers the federal leasing program, to strike a proper balance between securing a fair return to the Federal Government for the lease of its lands, increasing competition in exploitation of resources, and providing the incentive of a fair profit to the oil companies, which must risk their investment capital.

Federal administration of the leasing program and Federal regulation of offshore oil and gas development have been essentially a closed process involving the Secretary of the Interior and the oil industry. While the Secretary has on occasion sought or heard outside views, he has done so by rules established in his own discretion. Decisionmaking for the development of offshore oil and gas must be opened so that the coastal and other States affected by offshore oil and gas activities may participate in the process on a regular basis and so that affected local communities and the public at large may have an opportunity to be heard. Another purpose of H.R. 1614, is to provide statutory mechanisms that will open the decisionmaking process to a wide variety of views. The committee recognizes that a new Secretary of the Interior has made important reforms in the OCS process. The committee also believes that many of these reforms were based on the extensive record and recommendations it made. It is essential to codify these, and establish further reforms.

Congress has a special constitutional responsibility to make all needful rules and regulations respecting the territory or other property belonging to the United States. (U.S. Constitution, art. IV, sec. 3, clause 2). The Outer Continental Shelf Lands Act is essentially a carte blanche delegation of authority to the Secretary of the Interior. The increased importance of OCS resources, the increased consideration of environmental and onshore impacts and emphasis on comprehensive land use planning, require that Congress detail standards and criteria for the Secretary to follow in the exercise of his authority.

Regulations affecting the safety of the environment, of employees, and of marine life, have been the responsibility of the Coast Guard and the Department of the Interior since the OCS Lands Act of 1953.

Information has often been insufficient as to whether this responsibility is being adequately handled. Some activities remain unregulated. Others are underregulated. Compensation for spills has been inadequate. With the leasing of areas in risky frontier areas, modern statutory guidelines are essential. H.R. 1614 resolves these problems. It provides for studies, reports, and a review of safety regulations, and for coordinated and organized supervision by the most appropriate federal agencies with the most expertise. H.R. 1614 provides for periodic review mechanisms to balance environmental and other safety risks against the benefits and dangers of activities. H.R. 1614 establishes liability requirements and compensation for oil spills.

Exploitation of potential offshore oil and gas reserves will have a severe impact on the states, particularly in the earlier years. After a discovery, offshore oil and gas will have to be brought to shore, processed, stored, and transported. The States will need Federal assistance so that they can take proper steps to minimize the adverse environmental impact of exploration and then the onshore handling of the offshore oil and gas produced. They will also need federal assistance so that they can provide a proper infrastructure—new housing, schools, roads, and expanded municipal services—in areas that are suddenly impacted. H.R. 1614 authorizes a form of direct grants as a statutory vehicle for providing this assistance.

The purposes of H.R. 1614 can be summarized by its important provisions which include, inter alia, the following:

1. Declare a national policy for the Outer Continental Shelf.
2. Improve provisions for lease administration, including the suspension or temporary prohibition of activities, or lease cancellations.
3. Revise bidding and lease administration, including the introduction of alternative bidding systems.
4. Require the submission of exploration and development plans.
5. Allow new exploration techniques.
6. Require the development of a 5-year leasing plan.
7. Provide for coordination and consultation with Governors of affected States and through them affected local governments.
8. Require baseline and monitoring studies.
9. Require the review and enforcement of safety regulations, including the use of the best available and safest technology where economically achieveable.
10. Reduce frivolous lawsuits and delays by providing consolidated and expeditious procedures for citizen suits and judicial review.
11. Provide for an OCS information program.
12. Establish an offshore oil spill pollution fund.
13. Provide grants to impacted states.
14. Establish fishermen's contingency funds.

III. Background [1]

The creation in 1975 of the Ad Hoc Select Committee on the Outer Continental Shelf resulted from public concern about the then Depart-

[1] For a more detailed discussion of the issues covered in this section, see "Effects of Offshore Oil and Natural Gas Development on the Coastal Zone", a study prepared pursuant to the request of Hon. John M. Murphy, Chairman, for the use of the Ad Hoc Select Committee on Outer Continental Shelf by the Library of Congress, Congressional Research Service (Washington, D.C.: U.S. Government Printing Office, 1976) 396 pp.

ment of Interior's accelerated OCS leasing schedule under the general authority of the OCS Lands Act. This act was 23 years old and, most felt, in need of modernization. Congressional concern led to numerous bills to amend the OCS law which were referred to three or more House committees. Creation of the Select Committee avoided parliamentary confusion and delay.

Issues emerge on the American political agenda for a variety of reasons. Frequently, as in the case of Outer Continental Shelf oil and gas development, they arise for public consideration from a combination of pressures from outside the national political system, from scientific and technological advances, from efforts to protect vested interests, from changing levels and types of political consciousness, from new demands on scarce resources, from catastrophic events and from even pure chance.

A brief look at the history of the OCS question will reveal that these factors, plus many others, have converged to bring this issue to the attention of the United States Congress and then to heighten congressional interest in reform.

The Truman Proclamation and Early Federal-State Conflict

The Outer Continental Shelf Lands Act [2] was passed in 1953, after a series of events, from the middle 1940's to early 1950's, raised the issue of Tidelands Oil and Federal/State conflict over offshore resource jurisdiction to the public consciousness.

On September 28, 1945, President Harry S. Truman issued a Proclamation on the Continental Shelf [3] stating that the Government of the United States "regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas contiguous to the coasts of the United States and appertaining to the United States, subject to its jurisdiction and control." Although not so stated in the Proclamation, the continental shelf was considered to be that area contiguous to the Continent covered by no more than 100 fathoms (600 feet; 200 meters) of water. The Truman Proclamation and the claim of the United States was subsequently recognized by the Geneva Convention of the Continental Shelf.[4]

However, a number of jurisdictional problems arose between the U.S. Federal Government and certain State Governments. In 1947 the Supreme Court, rejecting prior rulings in this area, held that the Federal Government had "paramount rights" over the area 3 miles seaward from the normal low water mark on the California coast.[5] Similar decisions were made in Louisiana and Texas cases in 1950.[6] In effect, then, the Court had decided that these States had no title to, or property interest in, the submerged lands off of their respective coasts outside their inland waters.

However, there was a real question whether the Mineral Leasing Act of 1920 applied to the Outer Continental Shelf and whether it was necessary for the Congress to explicitly confer this authority on the Interior Department.

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[2] Public Law 212, 83d Cong., 1st sess., 67 Stat. 462, 43 U.S.C. 1331, et seq.
[3] Executive Order 9633, Federal Register 12304 (1945); 59 Stat. 885.
[4] 3 U.N. Doc. A/Conf. 13/L55, T.I.A.S. 5578.
[5] *United States* v. *California*, 332 U.S. 19 (1947).
[6] *United States* v. *Louisiana*, 339 U.S. 699 (1950); *United States* v. *Texas*, 339 U.S. 707 (1950).

Congressional Action, 1953

To resolve these jurisdictional issues statutorily, Congress passed two acts in 1953 which helped to clarify the distinction in Federal-State control. The Submerged Lands Act of 1953 [7] gives the coastal States exclusive rights to the resources up to 3 geographical miles from the coast. Subsequent court cases provided that, for historic reasons, the boundaries of Texas and Florida extended for three marine leagues (approximately 10½ miles) from their coast lines into the Gulf of Mexico. The Act also reaffirmed the jurisdiction, power and control of the United States beyond that point.

Although the Submerged Lands Act established coastal and seaward boundaries for Federal and State governmental jurisdiction, it was silent on the matter of Federal leasing for Outer Continental Shelf mineral resources. To remedy this situation, Congress passed the Outer Continental Shelf Lands Act of 1953 (OCSLA).

This legislation defines the OCS as all lands lying seaward and outside of State waters (3 miles) "and of which the subsoil and seabed (belong) to the United States and are subject to its jurisdiction and control". It also establishes very general guidelines and directives for the Secretary of the Interior in managing the resources of the OCS and in leasing tracts for oil and gas, and other mineral exploration and development.

Given the complexity of the OCS oil and gas issue and its implications for both the Federal and State Governments, the OCSLA is an all too general piece of legislation containing few mandates for the Secretary of the Interior in carrying out his important responsibilities in leasing OCS oil and gas resources. Much of the recent criticism leveled at the Act is based on its lack of specificity.

In its administration of the OCS oil and gas program, the Department of Interior fills in some details through its authority to promulgate rules and regulations which are published in the Federal Register.[8] Lacking in the permanency or visibility of positive law and indicating a piecemeal approach to modernization, revision and modification, much criticism has been directed toward the Department's past OCS rulemaking, which is often considered the result of the lack of specific directives in the OCSLA.

Legislative History Since 1953

There has been only one limited amendment to the Outer Continental Shelf Lands Act since 1953.[9] However, a number of statutes have been passed that have application to OCS areas and operations.[10] Specifically, the—

Fish and Wildlife Act of 1956.[11]—Establishes the United States Fish and Wildlife Service to study, protect and manage the fish resources under U.S. jurisdiction.

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[7] Public Law 31, 93d Cong., 1st sess., 67 Stat. 29, 43 U.S.C. 1301 et seq.

[8] See generally, 30 CFR 250.1 et seq.; 43 CFR 2883.0 et seq., and 3300.00 et seq.

[9] The Deepwater Port Act, January 3, 1975, Public Law 93-627, & 19(f). 88 Stat. 2146, required the state laws applicable to OCS activities to be continually updated. See 43 U.S.C. 1333, as amended (1977 Supp.).

[10] For a description of the various statutory responsibilities of the Federal agencies as to OCS activities, see "Agency by Agency Analyses. Federal Role in OCS Oil and Gas Development," prepared for this Committee by Oceans Program of the Office of Technology Assessment (May 1977) (available as a Committee Print of the Committee).

[11] Act of August 8, 1956. 70 Stat. 1119, as amended, 16 U.S.C. 742(a) et seq.

Geneva Conventions of 1958.[12]—Provides for a territorial sea of three miles, a contiguous zone up to 12 miles, and a continental shelf "to a depth of 200 meters or . . . to where the depth . . . admits to exploration . . ."

National Gas Pipeline Safety Act of 1968.[13]—Establishes requirements for the placing of pipelines.

National Environmental Policy Act of 1969.[14]—Provides requirements through regulations for draft environmental impact statements, hearings, and final environmental impact statements as to areas of leasing and actual leases.

Occupational Safety and Health Act of 1970.[15]—Requires employers, including those engaged in OCS development activities, to provide a safe working environment for all employees.

Federal Water Pollution Control Amendments of 1972.[16]—Limits and controls the discharge of oil or hazardous substances into or upon the navigable waters.

Marine Protection, Research and Sanctuaries Act of 1972.[17]—Authorizes the designation of marine sanctuaries which may extend to the outer limit of the continental shelf.

Coastal Zone Management Act of 1972.[18]—Provides federal assistance to coastal states to enable them to develop and administer their own coastal management programs, and for consistency of federal programs with approved plans.

Deepwater Port Act of 1974.[19]—Provides for the regulation of the location, ownership, construction, and operation of deepwater ports beyond the territorial limits of the United States.

Fishery Conservation and Management Act of 1976.[20]—Establishes a 200-mile fishery conservation zone off the U.S. coasts and provides that the United States have exclusive management authority over fish within the zone. The measure provides for international agreements allowing foreign fishing within the zone.

Coastal Zone Management Act Amendments of 1976.[21]—Provides loans, bond, guarantees, and automatic grants to states adjacent to or near Outer Continental Shelf Lands on which oil or natural gas is being produced.

The Federal Function

The Administration of the oil and gas resources on the OCS is primarily conducted, pursuant to the Outer Continental Shelf Lands Act, by the Department of the Interior. However, from the Authorities granted by the legislation cited above and other statutes, a number of Federal agencies have responsibilities in OCS resource development.[22]

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[12] Convention with Territorial Sea and the Contiguous Zone, U.N. Doc. A/Conf. 13/L.52, T.I.A.S. 5639; Convention on the Continental Shelf, U.N. Doc. A/Conf. 13/L.55, T.I.A.S. 5578.
[13] Public Law 90-481, 82 Stat. 720, 49 U.S.C. 1071 et seq.
[14] Public Law 91-190, 83 Stat. 854, 42 U.S.C. 4321 et seq.
[15] Public Law 91-596, 84 Stat. 1590, 29 U.S.C. 651 et seq.
[16] Public Law 92-500, 86 Stat. 816, 33 U.S.C. 1251 et seq.
[17] Public Law 92-522, 86 Stat. 1028-1946, 16 U.S.C. 1361, 1362, 1371-84, 1401-7.
[18] Public Law 89-545, as added Public Law 92-583, 86 Stat. 1281, 16 U.S.C. 1451 et seq.
[19] Public Law 93-627, 88 Stat. 2146, 33 U.S.C. 1501 et seq.
[20] Public Law 94-265, 90 Stat. 331, 16 U.S.C. 1801 et seq.
[21] Public Law 94-370, 90 Stat. 1013, 16 U.S.C. 1451 et seq.
[22] For a description of the various statutory responsibilities of the Federal agencies as to OCS activities, see "Agency by Agency Analysis, Federal Role in OCS Oil and Gas Development", prepared for this Committee by Oceans Program of the Office of Technology Assessment (May 1977) (available as a committee print of the committee).

Department of the Interior.—The Secretary is authorized to grant oil and gas leases on OCS tracts not exceeding 5,760 acres (3 miles by 3 miles) for a period of 5 years and for as long thereafter as further activity is approved or production occurs. The Department is advised by the OCS Environmental Studies Advisory Committee, the OCS Advisory Board, and the National Petroleum Council.

Within the Department of the Interior, the Bureau of Land Management (BLM) administers the leasing provisions of the OCSLA. BLM (a) receives nominations and selects tracts to be included in a lease sale; (b) prepares an environmental impact statement for each sale; (c) makes an economic, engineering and geological evaluation of tracts to be sold; (d) receives the bids and determines whether leases should be awarded to the highest bidders on individual tracts; (e) receives revenues from lease sales; and (f) grants in certain circumstances rights of way for pipelines.

The United States Geological Survey (USGS) has the primary responsibility within the Department for overseeing the development of a tract once it has been leased. USGS (a) through its area supervisors and in consultation with the petroleum industry, issues detailed regulations and special OCS orders and notices covering operational activities; (b) enforces OCS regulations and notices; (c) issues geophysical and geological exploration permits; (d) approves post-lease exploration and development plans, including the issuing of permits for both exploratory and development drilling; (e) approves pipelines as part of field development; and (f) collects royalties (which are deposited in the general treasury).

Finally, the Fish and Wildlife Service in Interior has a broad mandate to study, protect, and manage fish and wildlife resources and promote maximum use and enjoyment of wildlife resources compatible with their perpetuity.

Certain related activities may be conducted by the National Park Service, the Bureau of Indian Affairs, the Bureau of Mines, and the Bureau of Outdoor Recreation.[23]

Department of Commerce.—The National Oceanic and Atmospheric Administration (NOAA), within the Commerce Department, has several relevant OCS-related responsibilities.

The Coastal Zone Management Act of 1972 authorizes the Secretary of Commerce to provide grants-in-aid to coastal states to encourage the establishment of management programs for uses of land and water in coastal areas, and to require consistency of Federal programs with approved state plans.

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[23] The Conference Report (S. Rpt. 95-367) on legislation to establish a cabinet level Department of Energy was filed on July 27, 1977. It was then passed by both Houses and is now law. Under it there is a transfer from the Secretary of Interior to the Secretary of Energy of authority under the Outer Continental Shelf Lands Act, the Mineral Lands Leasing Act, the Mineral Leasing Act for Acquired Lands, the Geothermal Steam Act of 1970, and the Energy Policy and Conservation Act relating to: (1) Fostering competition for Federal leases; (2) implementation of alternative bidding systems for the award of Federal leases; (3) establishment of diligence requirements for operations of Federal leases; (4) setting rates of production for Federal leases; and (5) specifying the procedural terms and conditions for obtaining and disposing of Federal royalty interest taken in kind. Consultation and coordination between the Department of Interior and the Department of Energy concerning Federal leasing is provided for, including the establishment of a Leasing Liaison Committee. The Department of the Interior shall be the lead agency regarding the preparation of environmental impact statements required by certain sections of the National Environmental Policy Act unless the action is under the exclusive authority of the proposed Department of Energy.

The Coastal Zone Management Act Amendments of 1976 provided automatic grants based on oil and gas produced adjacent to, or landed, in coastal states. The Coastal Energy Impact Fund was established to ameliorate adverse impacts from OCS development. The activities encompassed within exploration and development plans, for which Federal permits are required, are subject to a coastal state's certification of consistency with such state's approved coastal zone management program.

The Marine Protection, Research and Sanctuaries Act of 1972 authorizes the Secretary of Commerce, after consultation with the heads of other interested agencies and the approval of the President, to designate areas extending seaward as far as the outer edges of the OCS as marine sanctuaries for preservation or restoration for their conservation, recreational, ecological or esthetic values.

The National Marine Fisheries Service is concerned with all potential impacts on living marine resources and reviews draft and final environmental impact statements. Its responsibilities for commercial fisheries necessitates a deep interest in the impact of OCS operations.

The National Ocean Survey studies tides, currents and other environmental features which affect location and design of offshore structures. Its geodetic work and navigation charts also have application to OCS operations.

The Environmental Protection Agency.—EPA's role in OCS activities involve its being consulted on all National Environmental Protection Act studies and reviews and in having the authority to set and enforce discharge levels of pollutants. Hence, if EPA finds any BLM Environmental Impact Statement (EIS) is unsatisfactory, it can exercise its limited protest function and refer the matter to CEQ. Under the Federal Water Pollution Control Act Amendments of 1972, EPA must issue National Pollutant Discharge Elimination System permits for exploratory and development drilling if discharges are involved.

Council on Environmental Quality.—The CEQ reviews both the draft Environmental Impact Statement and the final Environmental Impact Statement prepared by the Bureau of Land Management. Any protest on the final EIS lodged by the EPA will be considered by the CEQ.

The Department of Transportation.—The Coast Guard, located within the Department of Transportation, has several OCS responsibilities including (a) insuring that structures on the OCS are properly marked to protect navigation; (b) establishing and enforcing certain safety regulations for OCS structures; (c) inspecting and certifying floating drilling rigs; (d) maintaining surveillance for oil spilled or discharged into the waters over or immediately adjacent to the OCS; (e) coordinating the National Oil and Hazardous Substance Pollution Contingency Plan; and (f) regulating vessels.

The Office of Pipeline Safety (OPS), in the Transportation Department, has responsibility for the safety of pipelines, including establishing design criteria, and conducting inspections. In addition, OPS has the responsibility for establishing and enforcing regulations for pipelines connecting offshore platforms with onshore facilities, as

set out by a Memorandum of Understanding with the USGS, signed in the summer of 1976.

The Department of Defense.—The OCSLA and the 1899 Rivers and Harbors Act charge the Secretary of the Army with responsibility for preventing obstructions to navigation. The Corps of Engineers requires that a permit be obtained before an oil or gas structure may be placed on the OCS.

The Department of Labor and the Department of Health, Education, and Welfare.—Both Departments have responsibilities under the Occupational Safety and Health Act of 1970. HEW makes evaluations of working conditions and provides technical assistance to employers. The Labor Department is responsible for establishing and enforcing interim and some final rules established to provide employees with a safe working environment. OSHA retains jurisdiction over issues which are not specifically regulated by the U.S. Coast Guard or U.S. Geological Survey. OSHA has no regulations which pertain solely to the OCS, but it does have a new diving standard, still subject to modification, which does directly affect operations in this area. All OSHA General Industry, Construction, and Maritime Standards have general applicability on the OCS. Currently OSHA, USGS and USCG are attempting to clarify overlapping jurisdictions and regulations.

Federal Power Commission.—The FPC has jurisdiction over common carrier pipelines. It has broad discretionary powers over the approval, design and economics of common carrier gas pipelines, and it sets the wellhead price of OCS gas. It also issues certificates of public convenience and necessity required for gas pipeline construction.

The Federal Maritime Commission.—The Federal Water Pollution Control Act Amendments of 1972 requires the Federal Maritime Commission to determine the financial responsibility of oil shippers operating in the oceans adjacent to the U.S. Although most oil produced on the OCS is brought ashore by pipeline, this provision would apply to oil or gas brought ashore by barge or tanker.

The Federal Energy Administration.—FEA has been given the directive to insure that the supply of energy will be sufficient to meet demands. In energy shortages, FEA will establish priority needs. Among its functions is the development of a strategy for self-sufficiency in energy supplies. Its Office of Energy Resource Development is responsible for energy facility siting, construction and licensing.

The FPC and FEA are now part of the new Department of Energy.

Steps Involved in the Outer Continental Shelf Leasing Process

The time required to reach initial production and peak production of OCS oil and gas is dependent on a number of factors. The USGS has estimated that the total time required after a lease sale to achieve initial production would be in the range of 4 to 11 years and to attain peak production would be in the range of 7 to 14 years.

The stages leading up to an OCS lease sale, as outlined by the USGS, are as follows:[24]

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[24] See also U.S. Congress, "Federal Role in OCS Oil and Gas Development", Office of Technology Assessment: Oceans Program, Washington, D.C., May 1977. (Available as a committee print of this committee.)

STEPS	TIME INVOLVED
1. Leasing planning schedule.—USGS and BLM work closely in the preparation of the schedule which is always subject to revision. Review of the schedule itself by agencies, industry, State government and the general public is presently conducted under the auspices of the National OCS Advisory Board. USGS determines fair market values for tracts, which are later used to evaluate bids.	The preparation and revision of the OCS leasing planning schedule is really an ongoing activity which is determined by changing circumstances.
2. Request for tract nomination.—By way of publication in the Federal Register, industry, the States, and the general public are asked to designate tracts in a broad offshore region they think should or should not be offered for lease. This represents the major decision point initiating the lease sale process.	Request is published about 15 months prior to target date for any proposed OCS lease sale. Time given for tract nominations is officially 60 days.
3. Selection of general areas for inclusion in a lease schedule.—Information received in tract nominations is used to make a tentative selection of tracts to be considered in a proposed lease sale. Before making these selections, information is provided to adjacent States as to relative interest expressed in the area proposed for sale. The Secretary's decision on tracts to be included initiates the preparation of an EIS by BLM.	Selection of tentative tracts and notification takes about 60 to 90 days. Factors underlying selection include initial assessments of oil and gas potential, environmental resources that might be affected, availability of technology, proximity to markers, etc.
4. Draft environmental impact statement.—A draft statement is prepared by BLM and submitted to CEQ that includes much information as a description of the lease proposal, a description of the offshore and nearby onshore environment, a detailed tract-by-tract analysis on possible adverse impacts, mitigating measures, alternative proposals, technology necessary for exploration, development, and production from the proposed sale, as well as possible onshore socioeconomic impacts.	Preparation of the draft environmental statement takes about 3 to 6 months. When ready, it is made available for public review; a notice of availability is published in the Federal Register and a news release is issued accordingly. Forty-five days are allowed for review by Federal agencies, State and local governments and the general public.

STEPS—Continued	TIME INVOLVED—Continued
5. Public hearings.—No earlier than 30 days after publication of the draft environmental statement, a public hearing is held in the vicinity of the proposed sale. Notice of the hearings is published in the Federal Register, and a news release is issued. Environmental organizations, the academic community, Government representatives, industry, and the general public are invited to testify orally or in writing.	The public hearings are held usually, over a 2 to 4 day period. A period of at least 45 days is then provided during which all comments can be received and studied.
6. Final statement.—A final environmental impact statement is prepared. This document provides a basis for deciding whether or not to hold a sale, to delete particular tracts, or to place restrictions on specific tracts. The final statement is made available to the public, with notice of availability published in the Federal Register and disseminated by news release. At this point the EPA may file a protest with CEQ if it feels that aspects of the final EIS are deficient.	Preparation of the final environmental statement may take from 2 to 4 months. During the preparation and review of the environmental statements, geologists, geophysicists, and engineers prepare detailed estimates of the value of each tract being considered for sale.
7. Decision by the secretary.—A "Program Decision Option Document," prepared by BLM, outlines the various options available to the Secretary. The Secretary of the Interior decides whether the proposed sale will be held, based on all pertinent information available. If the decision is that a sale will be held, determinations are made concerning which tracts will be offered, and what the lease terms will be.	The Secretary of the Interior makes his decision no earlier than 30 days after the submission of the final environmental statement to the Council on Environmental Quality, and as much as 4 months after.
8. Notice of sale.—If a decision is made to hold a sale, a notice is published in the Federal Register stating the date, place, and time that bids are to be opened, the tracts to be included in the sale, the terms under which the sale will be held, and any special stipulations that may be imposed on particular tracts.	The notice of sale is published at least 30 days in advance. Notice may be given later concerning all the particulars.

STEPS	TIME INVOLVED
9. Lease sale.—Typically, leases are sold on the basis of a cash bonus with a one-sixth fixed royalty. The sale is publicly opened with a reading of all sealed bids. After the public reading, the bids are checked for technical and legal adequacy, and sufficient bonus, 20 percent of which must accompany the bid. The Federal government reserves the right to reject any or all bids. Acceptance or rejection of bids is not made until after the post-sale evaluation. Leases are awarded to acceptable high bidders.	A period of no more than 30 days is involved between the lease sale and an issuance of a lease to a successful bidder. During this time the USGS makes its recommendations on the acceptance or rejection of the highest bid.
10. Oil and gas lease contract.—An oil and gas mineral lease grants the right to the lessee to conduct necessary operations to search for, discover, and produce petroleum from OCS submerged lands in accordance with environmental and safety regulations. The Federal government reserves such rights as: leasing of other minerals, royalty in the amount or value of production, and the right to extract helium from all gas produced.	An oil and gas lease covers a compact area not exceeding 5,760 acres, and the primary term is 5 years, continuing thereafter as long as oil and gas may be produced in paying qualities or approved workover operations are conducted.
11. Exploratory drilling plan.—After securing the necessary permits from the Corps and EPA, the company submits an exploratory drilling plan to USGS. After preparing an environmental assessment the permit to drill is issued by USGS. Under the CZM Act, States with approved management plans have to certify that exploratory drilling plans are consistent with their management programs.	The securing of initial permits may take up to 6 months. Submission of the exploratory drilling plan by a company may take up to 3 months. Preparation of an environmental assessment of the plan may take from 1 to 12 months, and within 1 week of that assessment a permit good for 6 months is issued. A permit for each well is required. State objections could add 9 months to the time required for permits.
12. Development plan.—Development plans are first submitted to the Governor of the affected States. States with approved management plans will again have to certify consistency. The plan is	The Governor has up to 60 days to review and respond to the development plan. State objections could add 9 months to the time required for permits. Governmental review and approval

STEPS—Continued	TIME INVOLVED—Continued
then reviewed by Interior, where a new EIS is required. After approval a permit to install a platform is issued. Additional permits from the Corps, EPA and Coast Guard are required.	of the development plan takes between 6–12 months.
13. Permitting of development activities.—Drilling permits are issued by USGS for each well. The pipeline permit request is reviewed by several agencies. Pipeline corridor routes are reviewed. Pipe- permit is issued.	Industry construction and installation of platform takes from one to several years depending on a number of variables. Drilling permits are issued within 1 week to 1 month by USGS. Since it is a new process, no estimates for pipeline permitting are available.
14. Commercial production begins.—	Continued regulatory requirements must be met, including monthly reports to USGS, approval for well modification or abandonment by USGS, inspection of pipelines by the Office of Pipeline Safety, and compliance with OSHA and other regulations.

IV. Recent OCS Developments in the United States

The United States Outer Continental Shelf

The total area of the Outer Continental Shelf is approximately one-third the size of the United States. However, only a small fraction (14.4 million acres or about 3 percent of the U.S. continental margin) has been leased for oil and gas development.

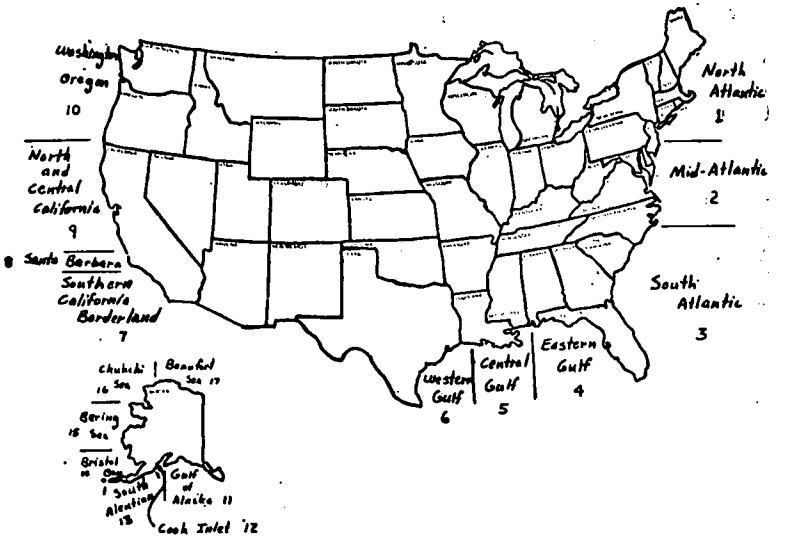
Practically all of the Federal OCS lease tracts which have been sold since 1954 are in the Gulf of Mexico, off the coasts of Louisiana and Texas. 185 tracts (988,170 acres) have been leased off Southern California, particularly in the Santa Barbara Channel area.

With the exception of certain portions of the Gulf of Mexico shelf off the shores of Louisiana, Texas, Mississippi, Alabama, and Florida, three other segments of the U.S. Outer Continental Shelf comprise so-called "frontier" areas where no previous federal oil and gas leasing had occurred.

These areas are: the Alaskan continental shelf, consisting of the Gulf of Alaska, the Bering Sea, the Chukchi Sea, the Beaufort Sea, and Prudhoe Bay; the Southern California basins, as well as offshore Oregon and Washington; and the Atlantic shelf, including the Georges Bank off New England, the Baltimore Canyon Trough (off New Jersey, Delaware and Maryland), the Southeast Georgia Embayment from South Carolina to Florida, and the Blake Plateau off northern Florida and Georgia.

Figure 1 presents an overall view of the U.S. Outer Continental Shelf. More detailed maps of OCS areas under consideration for leasing are shown in figures 2, 3, 4 and 5.[25]

FIGURE 1



Source, Bureau of Land Management, Aug. 3, 1977.

FIGURE 2

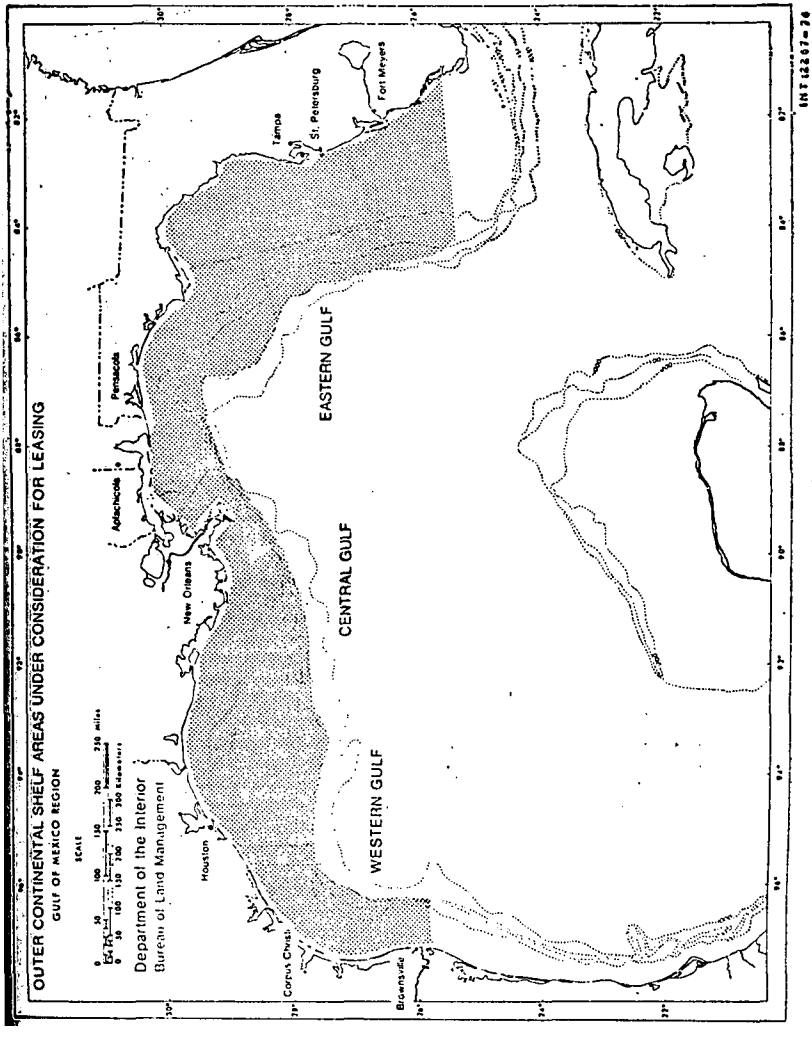

OUTER CONTINENTAL SHELF AREAS UNDER CONSIDERATION FOR LEASING
GULF OF MEXICO REGION
SCALE
Department of the Interior
Bureau of Land Management
Apalachicola
Pensacola
New Orleans
Houston
Corpus Christi
Brownsville
Tampa
St. Petersburg
Fort Meyers
EASTERN GULF
CENTRAL GULF
WESTERN GULF

FIGURE 8.

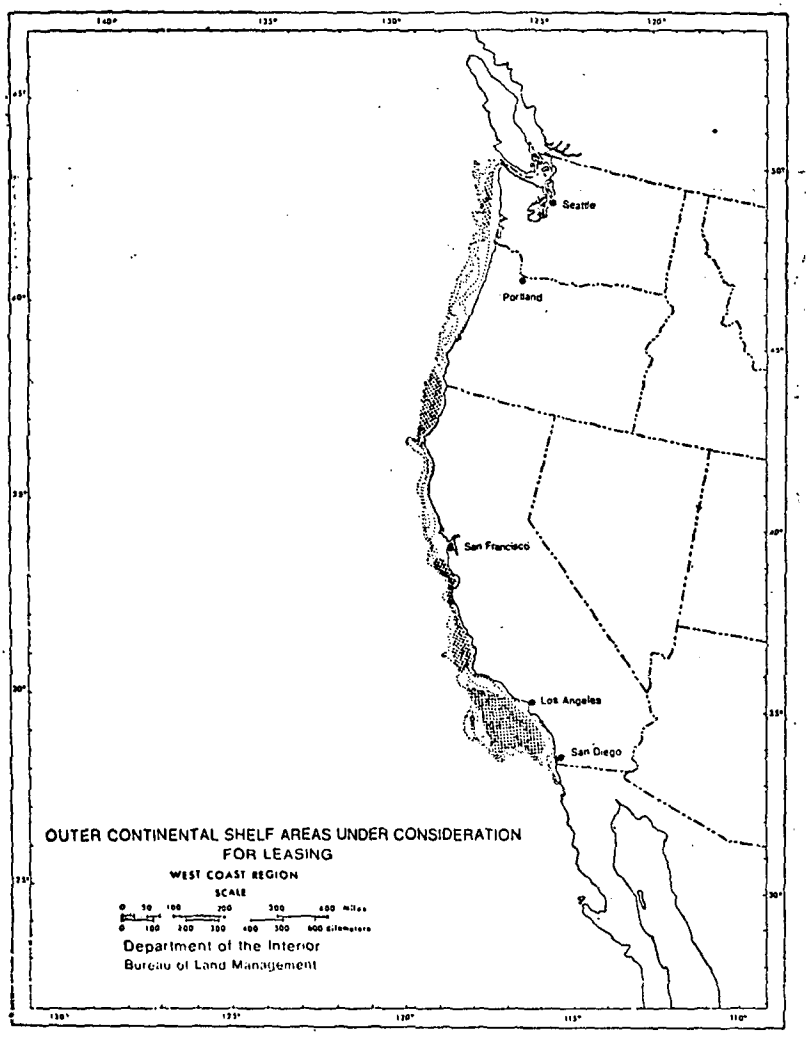

Seattle
Portland
San Francisco
Los Angeles
San Diego
OUTER CONTINENTAL SHELF AREAS UNDER CONSIDERATION FOR LEASING
WEST COAST REGION
SCALE
Department of the Interior
Bureau of Land Management

FIGURE 4

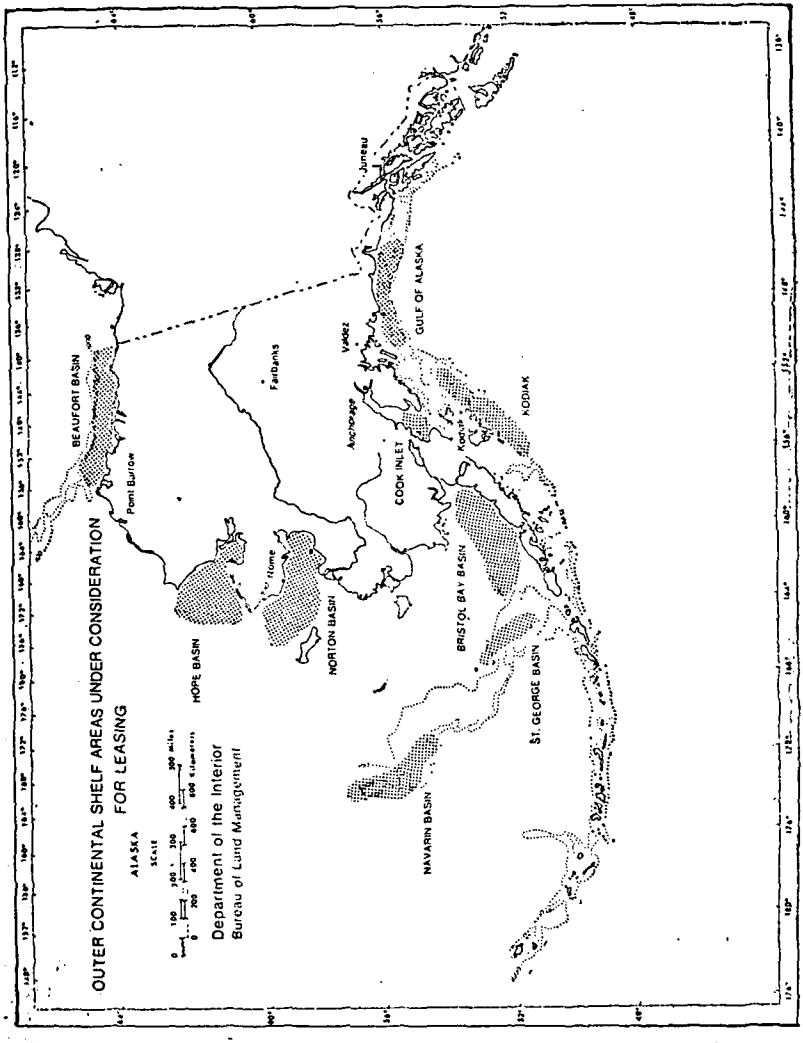
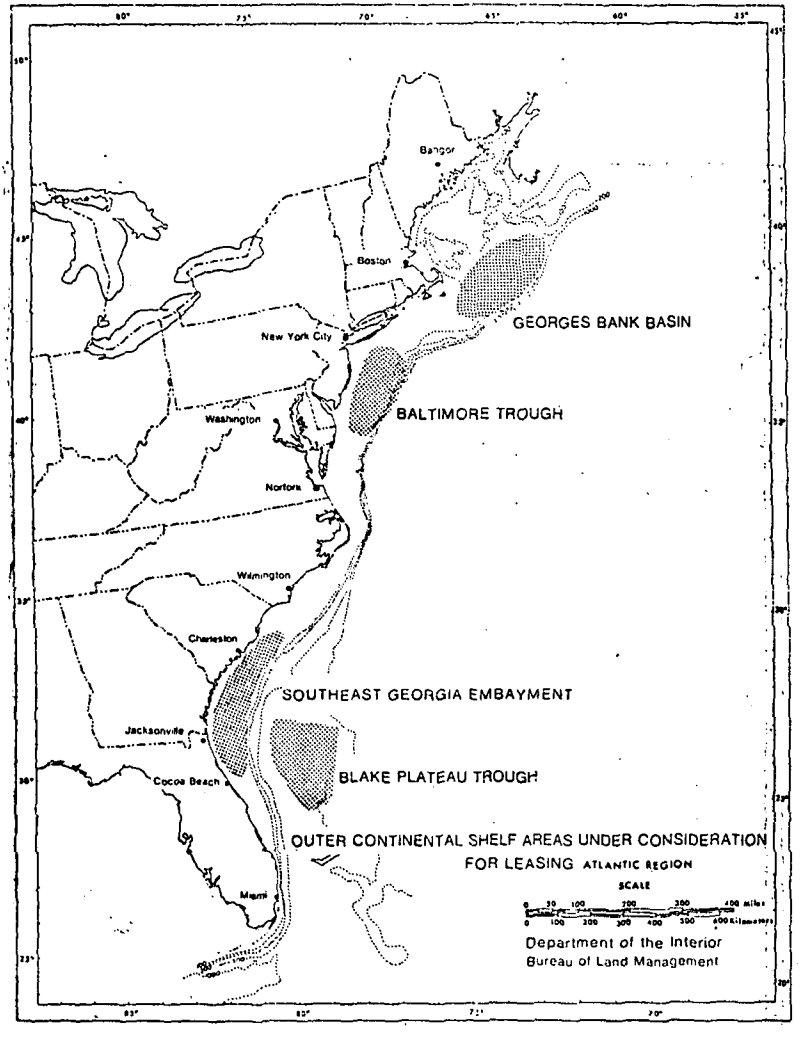

OUTER CONTINENTAL SHELF AREAS UNDER CONSIDERATION
FOR LEASING
ALASKA
SCALE
Department of the Interior
Bureau of Land Management
BEAUFORT BASIN
Point Barrow
HOPE BASIN
Fairbanks
NORTON BASIN
Anchorage
Valdez
COOK INLET
GULF OF ALASKA
Juneau
KODIAK
BRISTOL BAY BASIN
NAVARIN BASIN
ST. GEORGE BASIN

FIGURE 5



Oil and Gas Potential on the OCS

The precise amount of oil and gas which is recoverable from the U.S. continental shelf is unknown. Some sources of hydrocarbons, recoverable from known reservoirs under present economic and operating conditions, are called "demonstrated reserves". With sound geologic and engineering knowledge, predictability about the existence and amount of these reserves is reasonably accurate.

"Undiscovered recoverable reserves" are analyzed through geologic, seismic, and other types of exploratory methods. At best, the results

of such tests yield educated guesses that, within broad probability levels, certain quantities of recoverable oil and gas exist. It is only when actual drilling occurs that estimates take on greater degrees of accuracy.

Within the last several years, the USGS has been reducing its estimates of offshore oil and gas reserves. Table 1 presents the Survey's published data of June, 1975.[26]

U.S. Oil and Gas Production from the OCS

The primary source of U.S. offshore oil and gas production comes from the Gulf of Mexico. In 1974, the Gulf accounted for approximately 70 percent of the offshore oil produced and over 95 percent of the offshore natural gas produced. Most of this hydrocarbon production now comes from the federally-owned Outer Continental Shelf.

TABLE 1.—U.S. OFFSHORE OIL AND NATURAL GAS RESERVES AND RESOURCES

	Demonstrated reserves		Undiscovered recoverable resources		
	Oil (billions of barrels)	Gas (trillion cubic feet)	Oil (billions of barrels)	Gas (trillion cubic feet)	Gas liquids (billions of barrels)
Alaska	0.150	0.145	3–31	8–80	1.1
Pacific	1.116	.463	2–5	2–6	.1
Gulf of Mexico	2.262	35.348	3–8	18–91	1.3
Atlantic			0–6	0–22	.3
Total	3.528	35.956	8–50	28–199	2.8
Statistical mean			26	107	

Note: Undiscovered potential resources of oil, gas, and liquid gas have been estimated to range from 95 percent to 5 percent probability for all areas.

Source: U.S. Department of the Interior. Geological Survey. The undiscovered potential resources estimates are for seabed area to a depth of 200 meters. Potential oil and gas from the continental slope and rise are not included in the estimates.

[26] More recent USGS figures of Jan. 1, 1976 put the remaining, discovered, recoverable reserves in the Gulf of Mexico and offshore southern California at 4.727 billion barrels of oil and 34.276 trillion cubic feet of gas.

TABLE 2.—OIL AND CONDENSATE TOTAL OFFSHORE "STATE" AND "FEDERAL OCS"

Year	Alaska			California			Louisiana			Texas			Total		
	Barrels (thousands)	Percent		Barrels (thousands)	Percent		Barrels (thousands)	Percent		Barrels (thousands)	Percent		Barrels (thousands)	Percent	
		State	OCS		State	OCS		State	OCS		State	OCS		State	OCS
Prior				422,385	100		54,803	98	2				477,188	100	
1954				32,665	100		15,926	79	21	10	100		48,601	93	7
1955				33,252	100		25,731	74	26	156	99	1	59,139	89	11
1956				32,348	100		40,906	73	27	140	90	10	73,394	85	15
1957				30,561	100		52,835	70	30	256	98	2	83,652	81	19
1958				28,363	100		57,381	57	43	470	100		86,214	71	29
1959				26,787	100		72,793	51	49	499	100		100,079	64	36
1960				28,074	100		88,122	44	56	567	100		116,763	57	43
1961				29,887	100		103,197	38	62	292	100		133,376	52	48
1962				34,613	100		126,801	29	71	803	100		162,217	45	55
1963				38,346	100		149,087	30	70	669	92	8	188,102	44	56
1964	6	100		40,526	100		173,709	29	71	578	99	1	214,819	43	57
1965	30	100		42,772	100		199,293	27	73	557	99	1	242,652	40	60
1966	2,650	100		53,294	100		243,080	23	77	1,246	29	71	300,270	37	63
1967	15,937	100		64,807	100		284,033	23	77	3,400	16	84	368,177	40	60
1968	52,530	100		85,339	98	2	329,922	20	80	3,400	9	91	471,191	43	57
1969	60,887	100		96,145	90	10	365,691	18	82	3,109	11	89	525,832	41	59
1970	70,007	100		104,283	76	24	398,378	16	84	3,046	26	74	575,714	37	63
1971	66,152	100		101,717	69	31	444,363	13	87	2,885	42	58	615,117	32	68
1972	63,749	100		95,418	76	24	452,584	14	86	3,035	43	57	614,786	33	67
1973	61,715	100		89,218	79	21	429,465	13	87	2,285	29	71	582,683	32	68
1974	59,970	100		81,638	79	21	389,260	12	88	1,869	26	74	532,737	32	68
1975	59,999	100		79,575	81	19	353,570	11	89	2,136	37	63	495,280	33	67
1976	54,511	100		67,314	79	21	339,358	11	89	1,761	40	60	462,944	32	68
Through 1976	568,143	100		1,739,327	91	9	5,190,288	21	79	33,169	37	63	7,530,927	43	57

Source: Bureau of Mines, Alaska Scouting Service, Conservation Committee of California, Louisiana State Mineral Board, Louisiana Department of Conservation, Texas Railroad Commission. Louisiana and Texas are estimated in part. Printed in U.S. Geological Survey, June 1977, Harris, Walter M., Piper, Sharon K., McFarlane, Bruce E., "Outer Continental Shelf Statistics."

TABLE 3.—GAS TOTAL OFFSHORE "STATE" AND "FEDERAL OCS"

[In millions of cubic feet (MMCF)]

Year	Alaska			California			Louisiana			Texas			Total		
		Percent			Percent			Percent			Percent			Percent	
	MMCF	State	OCS	MMCF	State	OCS	MMCF	State	OCS	MMCF	State	OCS	MMCF	State	OCS
Prior					100		91,675	78	22				91,675	78	22
1954					100		81,325	31	69	3,440	100		84,765	34	66
1955					100		121,279	33	67	6,880	100		128,159	37	63
1956					100		136,527	39	61	6,880	100		143,407	42	58
1957					100		160,472	49	51	13,765	100		174,237	53	47
1958					100		233,967	45	55	24,080	100		258,047	51	49
1959					100		329,280	37	63	24,080	100		353,360	41	59
1960				1,113	100		408,388	33	67	30,960	100		440,461	38	62
1961				5,903	100		458,481	31	69	13,760	100		478,144	33	67
1962				10,671	100		588,361	23	77	41,280	100		640,312	29	71
1963				25,769	100		706,545	20	80	30,960	100		763,274	26	74
1964				35,323	100		783,474	21	79	30,960	100		849,757	27	73
1965	10	100		40,770	100		871,124	26	74	27,520	100		939,424	31	69
1966	1,200	100		46,839	100		1,265,899	24	76	59,259	29	71	1,373,197	27	73
1967	8,324	100		46,732	100		1,655,223	34	66	127,473	22	78	1,837,752	35	65
1968	22,844	100		86,565	99	1	2,057,291	31	69	154,631	29	71	2,321,331	34	66
1969	44,393	100		81,326	94	6	2,478,745	26	74	240,212	47	53	2,844,676	31	69
1970	82,369	100		71,225	83	17	2,800,104	19	81	264,420	50	50	3,218,118	25	75
1971	83,750	100		60,484	74	26	3,219,200	18	82	387,245	67	33	3,750,679	26	74
1972	74,982	100		44,830	78	22	3,480,831	17	83	156,772	6	94	3,757,415	19	81
1973	72,526	100		37,581	81	19	3,614,892	15	85	250,338	41	59	3,975,337	17	83
1974	73,295	100		30,156	82	18	3,871,964	14	86	254,338	37	63	4,229,753	17	83
1975	75,581	100		27,272	86	14	3,821,746	13	87	332,862	63	37	4,257,461	19	81
1976	72,164	100		14,305	76	24	4,003,808	13	87	206,043	55	45	4,296,320	16	84
Through 1976	611,438	100		666,864	90	10	37,240,601	20	80	2,688,158	51	49	41,207,061	24	76

Source: Bureau of Mines, Alaska Scouting Service, Conservation Committee of California, Louisiana State Mineral Board, Louisiana Dept. of Conservation, Texas Railroad Commission. Louisiana and Texas are estimated in part. Printed in U.S. Geological Survey, op. cit.

Of all domestic oil and gas produced, some 17 percent now comes from the Continental Shelf—about 18 percent of our oil and 15 percent of our natural gas. However, the prospects are that the U.S. Continental Shelf can be the largest domestic source of oil and gas between now and the 1990's.[27]

Onshore reserves, although perhaps larger in total than our OCS resources, are now being discovered in increasingly smaller structures—structures which are more expensive and slower to produce than the larger ones discovered in the early 20th Century. For example, from 1971 to 1976, of the 38,000 onshore wells which have been drilled in the continental United States, only five fields of over 100 million barrels of oil have been discovered.

In contrast, USGS data indicate the possibility that OCS oil and gas reserves may be found in large structures which can be translated into expeditious production sooner than in fields onshore. Some studies estimate that offshore oil and gas may comprise as much as one-fourth to one-third of the total U.S. oil production by 1985.

Emerging Issues in U.S. Offshore Oil and Gas Development OCS Activity; After Santa Barbara

Offshore drilling for oil and gas has been occurring since the beginning of this century. But for decades, it was carried on in relatively shallow state waters. As technology advanced, deeper depths could be penetrated and the search for petroleum hydrocarbons in the oceans moved farther out from shore.

This new technology, then, was a major ingredient in the congressional action of 1953. Between the passage of the Outer Continental Shelf Lands Act and 1968, the Interior Department conducted 23 OCS oil and gas lease sales. A total of 1,417 tracts covering 6,411,626 acres were sold for purposes of exploration and development.

Essentially, the OCS process was subject to little national scrutiny, although localized impact, particularly in the coastal States bordering the Gulf of Mexico, was the subject of some concern.

A major change occurred when an OCS drilling project in the Santa Barbara Channel was the scene of a major blowout in January 1969. The resulting oil spill damage to the ecology of the Channel raised the OCS issue to national attention.

The following chronology covers the period from the Santa Barbara incident to the present. It highlights only selected OCS events.

CHRONOLOGY OF SELECTED RECENT OCS EVENTS, 1969–77

January 28, 1969.—A blowout from offshore oil drilling in Santa Barbara Channel resulted in the largest oil spill in U.S. history.

February 5, 1969.—The Coast Guard announced that the Federal Government had taken control of the oil containment and cleanup operations in the Santa Barbara Channel.

February 18, 1969.—Secretary of the Interior Walter Hickel held the oil companies responsible for cleaning up any pollution resulting

[27] For a detailed discussion of the studies which have led to this conclusion, see "Effects of Offshore Oil and Natural Gas Development on the Coastal Zone," op. cit., particularly chapter 1.

from offshore drilling operations, even if there was no proof that the companies were at fault.

February 19, 1969.—The State of California announced that it would sue the Federal Government, Union Oil Co., and three other companies for $1.06 billion for damage caused by oil leaks from offshore wells.

September 1969.—A barge accident off Falmouth, Mass., spilled 100,000 gallons of No. 2 light home heating oil in a relatively confined area, poisoning marine life.

September 17, 1969.—The Department of the Interior issued new regulations pertaining to mineral leasing on the OCS (Circular 2264).

June 1971.—The Secretary of the Interior first promulgated a tentative 5-year OCS leasing schedule.

November 8, 1971.—A group of 60 Congressmen representing Eastern States sent a letter to the Secretary of the Interior demanding a halt to the Department's plans to lease offshore drilling sites along the Atlantic coast.

January 1972.—An injunction against a lease sale offshore Louisiana was upheld by the U.S. District Court of Appeals on the grounds that the Department of the Interior failed to consider adequately the alternative sources of fuel in preparing its environmental impact statement (EIS) required under the National Environmental Policy Act.

January 11, 1972.—Secretary of the Interior Rogers C. B. Morton assured representatives of 14 east coast States that they would have a role in OCS decisionmaking. He also said that "at the earliest, even if the legal and environmental hurdles were crossed, it would be 7 to 10 years before we could get significant production from the Atlantic Outer Continental Shelf, if indeed, oil exists there. We do not know if it does."

March 22, 1972.—The Department of the Interior announced plans to conduct geological surveys and bottom sampling along the Atlantic OCS north of Cape Hatteras in the coming summer.

March 27, 1972.—Officials from Massachusetts, New York, Connecticut, Rhode Island, Maine, and New Hamsphire scheduled a meeting in Washington, D.C. with their congressional representatives and Interior Secretary Morton to halt plans for core drilling and other geological investigations by the U.S. Geological Survey on the Atlantic Shelf.

April 18, 1973.—President Nixon announced that the OCS leasing rate would be increased 1 million acres per year to 3 million acres per year, and that the 5-year tentative leasing schedule would be revised to reflect this acceleration.

April 18, 1973.—President Nixon directed the Council on Environmental Quality to study the environmental impact of oil and gas production on the Atlantic and Gulf of Alaska OCS.

July 1, 1973.—The Interior Department announced its decision to postpone planned geological and geophysical investigations in the Atlantic OCS off New England, while allowing the continuation of similar work in the Gulf of Alaska and adjacent Lower Cook Inlet.

July 10, 1973.—The Bureau of Land Management issued a proposed schedule of provisional OCS leasing, from 1973 to the end of fiscal year 1978.

September 12, 1973.—The CEQ opened public hearings on drilling for oil and gas off the east coast.

December 1973.—The Bureau of Land Management (BLM) opened an Atlantic OCS office in New York City.

December 14, 1973.—The Sierra Club, two Florida Congressmen, and other environmental groups filed suit to block a Federal lease sale off the shores of Mississippi, Florida, and Alabama. A Federal district court in Tampa ruled that the Sierra Club did not show sufficient cause to hold up the sale and refused to grant the requested injunction.

December 20, 1973.—The Department of the Interior received close to $1.5 billion in bids at the Federal lease sale of tracts off of Florida, Mississippi, and Alabama.

January 23, 1974.—The President directed that OCS leasing be further accelerated and that 10 million acres be leased in 1975.

January 24, 1974.—The Subcommitee on Immigration, Citizenship, and International Law of the House Committee on the Judiciary commenced hearings on OCS oil and gas policy. Further hearings were held on January 30, February 7, March 6, and March 17, 1974. Interior Department and large oil company representatives argued for no change in the OCS Act drafted by this Judiciary subcommittee in 1953. Representatives from States, environmental organizations, and citizen groups urged reform.

February 20, 1974.—The Department of the Interior published in the Federal Register a request for comment on 17 potential OCS oil and gas leasing areas. The responses ranked the areas of greatest potential as the Gulf of Alaska, the Central Gulf of Mexico, and the Beaufort Sea respectively. Four companies ranked areas according to which frontier areas they would prefer to have leased first. In order of leasing priority, these areas were the mid-Atlantic, the Gulf of Alaska, and Cook Inlet.

March 1974.—The Secretary of the Interior created the OCS Research Management Advisory Board (recently redesignated as the OCS Environmental Studies Advisory Committee). This group advises the Secretary on the planning and implementation of BLM's environmental program, including baseline and monitoring studies and is composed of State and Federal representatives.

April 23–May 3, 1974.—The Senate Committee on Commerce held hearings on OCS oil and gas development pursuant to S. Res. 222.

May 1974.—The U.S. Geological Survey (USGS) released a final environmental statement on proposed oil and gas development in the Santa Barbara Channel.

May 1, 1974.—The Department of the Interior promulgated OCS Order No. 11 for development of certain tracts in the Gulf of Mexico.

May 21, 1974.—The Senate Committee on Commerce, Subcommittee on Oceans and Atmosphere, held additional hearings pursuant to S. Res. 222 on OCS development.

July 16–23, 1974.—The Senate Committee on Interior and Insular Affairs held hearings on S. 3221, a bill to amend the Outer Continental Shelf Lands Act of 1953.

August 5, 1974.—The Senate Commerce Committee held hearings in Boston on OCS oil and gas development.

September 18, 1974.—The Senate passed, on a 64–23 vote, S. 3221, a bill which provided for the orderly development of oil and gas on the OCS.

October 1, 1974.—The USGS published a notice of intention to develop operating orders prior to the commencement of drilling or producing in the Atlantic.

October 7, 1974.—The Senate Judiciary Subcommittee on Administrative Practice and Procedure was told, in testimony given by Congressman John D. Dingell of Michigan, that the possibility of the Interior Department dealing with a ten million acre OCS leasing program was "appalling". Mr. Dingell noted that the investigation conducted by his House Small Business Subcommittee on the Activities of Regulatory Agencies indicated that Interior was unable to assure "that the Government received fair value for the (OCS) tracts it leases, that the Government knows the amount of the reserves underlying the leases, or that the Government is capable of administering and supervising operations on leases once they are let."

October 9, 1974.—Senator John V. Tunney of California introduced S. Res. 426, which would delay the Interior Department's intention to lease 10 million acres in 1975 until the coastal States have completed or "made reasonable progress" toward the completion of their coastal zone management programs.

October 16, 1974.—The Department of the Interior conducted an experimental lease sale in New Orleans, in which the sale of certain tracts was based on royalties the Government would receive from production.

October 18, 1974.—The Interior Department issued a draft environmental impact statement on the proposed ten million acre OCS leasing program.

November 13, 1974.—President Ford met with 18 coastal State Governors or their representatives to discuss the urgency of stepping-up U.S. development of offshore energy resources. Several Departmental heads also participated.

November 13, 1974.—The Interior Department issued a revised OCS lease schedule through 1978. The schedule included five areas in the Atlantic, six offshore Alaska, and others in the Gulf of Mexico and offshore California.

November 14, 1974.—Interior Secretary Morton, who was also serving as Chairman of the Administration's Energy Resources Council, told a meeting of coastal States Governors that "expeditious development of the Outer Continental Shelf is the keystone to meeting the Nation's energy needs in the late 1970's and 1980's."

December 11, 1974.—The USGS issued new OCS orders requiring all geological and geophysical permits to require the permittee to furnish new and processed data upon the request of the USGS Supervisor.

December 17, 1974.—The Interior Department issued a call for nominations and comments on a possible OCS sale of 20.6 million acres in the southeastern part of the Bering Sea, off Alaska.

January–February 1975.—A series of meetings and conferences were held along the East Coast by coastal State Governors and gubernatorial representatives to discuss, at least in part, the OCS issue. State-

ments and resolutions were promulgated by the Atlantic coastal State Governors, the New England Governors of the New England Regional Commission, and the National Governors Conference, among others. The positions of the states generally called for greater participation for adjacent coastal States and communities in the Interior Department OCS decisionmaking, state and local access to more geological and geophysical data on oil and gas resources lying off their shores, a separation of exploration and development stages to access the potential impact of OCS activity onshore, and a sharing of Federal OCS revenues or a provision of federal assistance to aid states to plan for and ameliorate the negative effects of OCS activity.

January 15, 1975.—President Ford issued his state of the Union message in which he set forth national energy goals to "reduce oil imports by 1 million barrels of oil per day, to end vulnerability to economic disruption by foreign suppliers by 1986, and to * * * have the ability to supply a significant share of the energy needs of the free world by the end of the century."

January 15, 1975.—Senator Ted Stevens of Alaska introduced S. 130, a bill which would distribute a portion of OCS revenues to States.

February 1975.—The House Committee on Interior and Insular Affairs, Subcommittee on Public Lands, held hearings to determine whether or not the United States is getting maximum gas production from wells on public lands including the OCS.

February 1975.—The Interior Department conducted OCS lease sale No. 37 in south Texas. 626,585 acres were leased, and the total amount of the high bids accepted by the Department was $274,690,956.

February 1975.—The Interior Department extended, then later withdrew, an invitation to bid on OCS tracts off the Atlantic Coast. The Department promised the coastal States that it would wait until after a Supreme Court decision on ownership of offshore mineral resources (*United States* v. *Maine*).

February 3, 1975.—The administration asked Congress for an extra $3 million in supplementary funds for the Coastal Zone Management program. The money is to be granted to states for OCS-related planning efforts in conjunction with their coastal management work underway.

February 6, 1975.—The Interior Department held hearings in Beverly Hills, Calif., concerning their proposal to lease 1.6 million acres off the California coast. The testimony was generally against the proposal.

February 10, 1975.—Two counties and five towns on New York's Long Island sued the Interior Department to block its plans to sell 10 million acres of offshore tracts for oil and gas development.

February 21, 1975.—A draft environmental impact statement on the proposed 1.6 million acre California lease sale is released by the Interior Department for public review.

February 21, 1975.—New regulations were issued by the Interior Department which bar joint bidding among companies producing more than 1.6 million barrels.

February 24, 1975.—The United States Supreme Court began hearing argument on the cases related to the claims of States to the OCS (*United States* v. *Maine*).

March 14, 1975.—The Senate Interior Committee began joint hearings with the Commerce Committee's National Ocean Policy Study on OCS development.

March 26, 1975.—The Interior Department called for nominations of offshore tracts in the mid-Atlantic area.

April 1975.—The Interior Department proposed new regulations defining policies, procedures and requirements for geological and geophysical exploration of the OCS.

April 17, 1975.—The Supreme Court rules in the *United States* v. *Maine*, et al, case that the U.S. Federal Government has the exclusive sovereign rights to the resources of the seabed and subsoil of the Atlantic Ocean seaward of the 3-mile limit.

April 21, 1975.—The House Appropriations Committee began hearings on OCS leasing.

April 22, 1975.—The House adopted H. Res. 412, which established the Ad Hoc Select Committee on the Outer Continental Shelf. The Select Committee is comprised of members from the House Merchant Marine and Fisheries, Judiciary, and Interior and Insular Affairs Committees. Congressman John M. Murphy of New York was appointed Chairman. H.R. 6218 was referred to the committee.

May 1975.—The Interior Department held lease sale No. 38. Tracts in the Central Gulf of Mexico, off Texas and Louisiana, totalling 406,942 acres were sold. High bids which totaled $232,916,050 were accepted by the Department of the Interior.

June 7, 1975.—The House Ad Hoc Select Committee on the OCS held its first public hearings in New Orleans.

June 9, 1975.—The House Select Committee was briefed on various aspects of OCS oil and gas development by the Congressional Research Service of the Library of Congress, the Office of Technology Assessment, the General Accounting Office, and the staffs of the National Ocean Policy Study and the Interior and Insular Affairs Committee of the Senate.

June 11, 1975.—The Interior Department announced that 20 oil and gas companies requested permission to tap petroleum and natural gas reserves from the Baltimore Canyon structure off New Jersey, New York, Delaware, and Maryland.

June 17, 1975.—The House Select Committee began 3 days of hearings in Washington, D.C.

June 27, 1975.—The House Select Committee left for a 7-day investigative trip to England, Scotland, and Norway for briefings on the offshore drilling experience in the North Sea.

July 9, 1975.—The Interior Department extended the public comment period on the Santa Barbara Channel draft environmental impact statement from July 31 to September 1, 1975.

July 1975.—The Interior Department held OCS lease sale No. 38a in the Central Gulf of Mexico. 336,301 acres off the coasts of Texas and Louisiana were leased with a high bid total of $163,214,006.

July 16, 1975.—The Senate passed S. 586 by a 73–15 vote. The bill would make substantial amendments to the Coastal Zone Management Act of 1972, including the establishment of an impact fund to assist coastal states to plan for and ameliorate the adverse effects of energy activities in the coastal zone.

July 17, 1975.—The Senate Interior and Insular Affairs Committee reported out favorably S. 521, a bill to amend the Outer Continental Shelf Lands Act of 1953.

July 18, 1975.—The House Select Committee began 2 days of hearings in New York City to discuss the exploration and development of the Baltimore Canyon trough and the impact of that activity on North Atlantic coastal States and communities.

July 25–26, 1975.—The House Select Committee held hearings in Ocean City, N.J. and Philadelphia, Pa.

July 30, 1975.—The Senate passed S. 521 on a 67–19 vote.

August 1975.—The California State legislature passed, and the Governor signed into law, a ban on the laying of any pipelines across State waters to onshore facilities. The restriction extends to 1978 or until the State adopts a long-term coastal plan which is being developed by a State commission.

August 2, 1975.—The House Select Committee began a 7-day schedule of public hearings and investigatory trips to California and Alaska. Hearings were held in Los Angeles, and in San Francisco, in California, and Yakutat, Cordova, and Anchorage, in Alaska. Field investigations were conducted in the Santa Barbara Channel, The Cook Inlet area near Kenai, Alaska, and the North Slope oil pipeline and facilities in Prudhoe Bay, Alaska.

September 12–13, 1975.—The House Select Committee began 2 days of hearings in New London, Conn., and Boston on the impact from potential exploration and development of the Georges Bank area off New England.

September 26, 1975.—The Interior Department prepared a final environmental impact statement for the proposed program to accelerate oil and gas leasing.

September 26, 1975.—The House Select Committee held a public hearing in Ocean City, Md.

October 1975.—The Interior Department approved an accelerated offshore oil and gas leasing plan. The Department opened the way for six lease sales through 1978, including at least one each in the Atlantic, Pacific, and Alaskan frontier areas.

October 1, 1975.—The Interior Department established an OCS Advisory Board with members from the coastal States, the private sector, and the Federal Government. The purpose of the Board is to advise the Department on all aspects of exploration and development of OCS resources.

October 1, 1975.—The Interior Department published the final regulations banning joint bidding among the largest oil companies which produce more than 1.6 million barrels of oil and natural gas equivalent per day.

October 15, 1975.—The California Coastal Zone Conservation Commission held up an oil company permit to drill 17 new wells in State waters within the 3-mile limit at Santa Barbara. The Commission noted that the proposed onshore facilities were unacceptable.

October 31, 1975.—The Interior Department issued a call for nominations for offshore tracts in the western Gulf of Alaska.

November 1975.—The Interior Department approved the first Atlantic offshore stratigraphic tests.

November 4, 1975.—The Interior Department published final regulations providing for new procedures for State governmental participation in OCS decisions, including a 60-day review and comment period on the lease development plan submitted by industry.

November 13, 1975.—The House Select Committee began 3 days of hearings in Washington, D.C. These hearings concluded the committee's public hearings schedule on H.R. 6218.

November 17, 1975.—The USGS revised OCS Order No. 2 in the Federal Register to update requirements for drilling procedures on the OCS in the Pacific area. The order included requirements for well casing and cementing, blowout prevention, mud program supervision and training, directional surveys, hydrogen sulfide, etc.

November 17, 1975.—The United States District Court in Los Angeles rejected a suit brought by the State of California to delay the Interior Department's planned OCS sale off the southern part of the State.

December 5, 1975.—The U.S. District Court in Washington, D.C. turned down a request for an injunction to halt the Interior Department's proposed OCS Sale No. 35 off southern California. The suit was brought by the State of California and a coalition of the State's cities and counties.

December 10, 1975.—The Interior Department released a draft environmental impact statement for proposed OCS sale No. 40 off the Mid-Atlantic Coast in the Baltimore Canyon Trough area.

December 11, 1975.—The Interior Department held OCS lease sale No. 35. 310,049 acres were sold off the coast of southern California with the high bids totaling $417,312,000. As an experiment, three of the tracts were sold with a fixed royalty of 33⅓ percent—double the normal rate.

December 23, 1975.—The Administrator of the Environmental Protection Agency (EPA), Russell E. Train, recommended to the Interior Department that it postpone indefinitely its scheduled OCS sale of tracts in the northern Gulf of Alaska. Train cited environmental uncertainties and the need for additional study in his letter to the Secretary of the Interior.

January 23, 1976.—The Chairman of the White House Council on Environmental Quality, Russell W. Peterson, asked the Interior Department to delay its scheduled OCS sale of tracts in the northern Gulf of Alaska.

January 23, 1976.—The Interior Department announced an amendment to the joint bidding ban previously promulgated. Under the amendment, major companies may be exempted from the restrictions in frontier high risk, or high cost areas.

January 27, 1976.—Public hearings were held in Atlantic City, New Jersey on the draft Environmental Impact Statement for the proposed OCS lease sale of tracts in the Mid-Atlantic Baltimore Canyon area.

February 1976.—A consortium of oil companies began a $9 million program of stratigraphic testing in the Baltimore Canyon and Georges Bank areas off the Atlantic coast.

February 2, 1976.—A barge sank at the mouth of the Potomac, spilling 250,000 gallons of oil into the Chesapeake Bay. Besides pol-

luting beaches and marshes, the spill caused the deaths of thousands of birds.

February 4, 1976.—By a 36–0 vote, the House Merchant Marine and Fisheries Committee reported out favorably H.R. 3981 (H. Rep. 94–878). The bill, prepared by the Oceanography Subcommittee, chaired by Representative John M. Murphy of New York, amends the Coastal Zone Management Act of 1972, including the creation of a $1.5 billion Coastal Energy Activity Impact program to provide Federal assistance to coastal States impacted by OCS and other coastal-related energy activities. The comparable Senate legislation is S. 586.

February 18, 1976.—Secretary of the Interior Thomas S. Kleppe announced the decision to move ahead with the northern Gulf of Alaska OCS sale, but reduced the area to be offered for sale from 1.8 million to 1.1 million acres. The Secretary noted that the tracts removed were those determined to be most environmentally or geologically hazardous.

February 18, 1976.—The Interior Department conducted OCS lease sale No. 41. Thirty-four tracts offshore Louisiana and Texas in the Gulf of Mexico were sold for accepted high bids totaling $175,976,493.

February 19, 1975.—The House Judiciary Committee held hearings on the OCS joint bidding ban.

March 2, 1976.—The Interior Department announced the availability of a list of 152 tracts totaling 865,364 acres which are being considered for a possible OCS lease in Alaska's lower Cook Inlet.

March 3, 1976.—Because of restrictions placed on its proposed onshore facilities by the California Coastal Zone Conservation Commission, Exxon Corp. declared its intention to conduct its Santa Barbara OCS extraction and shipping operations outside State waters. The Interior Department indicated that it would not withdraw its approval of the (Exxon) offshore terminal.

March 4, 1976.—The House Select Committee began markup of H.R. 6218.

March 5, 1976.—The Interior Department announced the publication of the final environmental impact statement on possible OCS development in the Santa Barbara Channel under existing law.

March 11, 1976.—The House passed H.R. 3981, the Coastal Zone Management Act Amendments, by a 370–14 vote.

March 16, 1976.—The Interior Department announced that a list of 299 tracts had been tentatively selected for consideration in proposed OCS sale No. 45. The tracts, totaling 1.6 million acres, are located in the southeastern Bering Sea area offshore Alaska.

March 16, 1976.—The Interior Department asked for industry nominations of tracts for proposed OCS sale No. 47 in the Gulf of Mexico.

March 22, 1976.—The Senate disagreed with the House version of the Coastal Zone Management Act Amendments (H.R. 3981), requested a conference, and appointed Senate Conferees.

March 23, 1976.—The House insisted on its amendments to S. 586 and appointed its Conferees.

March 30, 1976.—A memorandum of understanding was signed between the Bureau of Land Management and the Wildlife Service in relation to interfacing activities associated with the OCS leasing proc-

ess, including baseline studies, resource assessments, tract selections, environmental impact statements and other aspects.

April 6, 1976.—A request for an injunction to block the scheduled OCS lease sale No. 39 in the northern Gulf of Alaska was denied in the U.S. District Court. The suit had been brought by the State of Alaska and the City of Yakutat.

April 13, 1976.—The House Select Committee completed markup on H.R. 6218 and ordered favorably reported the bill for House consideration.

April 13, 1976.—The Interior Department conducted OCS lease sale No. 39 in which 81 of 189 tracts offered in the northern Gulf of Alaska were sold for high bids totaling $571.8 million.

April 27, 1976.—The U.S. Department of the Interior selected 225 tracts totaling 1.28 million acres off the coasts of North Carolina, Georgia, and Florida for a proposed offshore lease sale (OCS No. 43). It will be the first lease sale in the part of the Atlantic.

May 4, 1976.—The House Ad Hoc Select Committee reported H.R. 6218—redesignated as S. 521, the OCS Lands Acts Amendments of 1976 (H. Rept. 94–1084).

May 26, 1976.—The final environmental impact statement on the proposed mid-Atlantic offshore oil lease sale was released by the Bureau of Land Management and was submitted to the Council on Environmental Quality for the required 30-day review.

June 21, 1976.—A final report of an investigation conducted by the Federal Power Commission indicated that the American Gas Association had underestimated the gas reserves on 31 leases in the Gulf of Mexico by 54 percent. Based upon a sample of 4 percent of the acreage under lease, the survey indicated reserves of 1.7 trillion cubic feet.

July 26, 1976.—The President signed S. 586, into law (Public Law 94–370), amending the Coastal Zone Management Act for a Coastal Impact Fund for coastal States for amelioration of impacts from offshore development.

August 13, 1976.—A Federal Judge ordered a temporary injunction against the first Atlantic OCS lease sale (OCS No. 40) stating, inter alia, that the Department of the Interior failed to adequately consider potential adverse impacts on coastal areas.

August 17, 1976.—The first Atlantic OCS lease sale No. 40 drew bids of $1.1 billion, about twice as much as expected. An appeals court lifted the temporary stay at the last minute allowing the lease sale to proceed. 154 tracts were offered off the costs of Delaware, Maryland, and New Jersey; however only 93 tracts were eventually leased.

September 20, 1976.—The Conference Committee reported out S. 521 for further consideration by both Houses (H. Rept. No. 94–1632).

September 28, 1976.—House voted (198 to 194) to recommit the conference report on S. 521 to the committee on conference thus ending any further possibility of passage during the 94th Congress.

November 16, 1976.—Lease sale No. 44 offered 254,488 acres in the Central and Western Gulf. However, only 43 tracts, covering 178,127 acres for a total of $379,148,962 in bonus bid money.

December 15, 1976.—The *Argo Merchant* ran aground off Nantucket, Mass. releasing 7.6 million gallons of heavy, industrial crude

oil. A total of $1.4 million was spent on the spill, including rescue operations, cleanup and loss of equipment. In the face of 50-knot winds and 15-foot waves, the incident demonstrated the relative infancy of oil spill containment and cleanup technology.

December 27, 1976.—The Liberian registered tanker, *Olympio Games*, ran aground in the Delaware River, spilling 133,500 gallons of light Arbian crude oil.

December 29, 1976.—The U.S. Geological Survey approved a Continental Offshore Stratigraphic Test (COST) well to be drilled on the Georges' Bank. It was announced that COST No. G–2 would be conducted on a cost-shared basis by a group of nineteen companies at an estimated cost of $14 million. It was expected that the offstructure test, located about 116 miles off Nantucket Island, would provide geological information of use in evaluating offshore tracts, scheduled to be offered in the first lease sale in that area.

January 10, 1977.—Senator Henry Jackson introduced the text of S. 521, as reported by the committee of conference in the waning days of the 94th Congress, which became S. 9, to amend the Outer Continental Shelf Lands Act of 1953 and other purposes.

January 11, 1977.—H. Res. 97, was submitted, considered and agreed to. The resolution authorized the Speaker to establish an Ad Hoc Select Committee on the Outer Continental Shelf to consider and report to the House on H.R. 1614. The bill would establish a policy for the management of oil and natural gas in the Outer Continental Shelf, to protect the marine and coastal environment, and to amend the Outer Continental Shelf Lands Act. Also, Congressman Murphy of New York, introduced H.R. 1614.

January 12, 1977.—The Department of Interior issued a revised leasing schedule.

January 17–18, 1977.—The Senate Interior Committee held 2 days of hearings on the nomination of Cecil D. Andrus for the post of Secretary of Interior. Mr. Andrus urged Congress to quickly pass OCS legislation. He indicated that he would slow the existing Government timetable for OCS development; he would stress environmental concerns; he would require "due diligence" in the development of Federal oil and gas leases; and he would ensure that state officials have more input into DOI decisions on OCS development.

January 18, 1977.—The Department of Interior announced an OCS lease sale for the Cook Inlet on February 23, 1977. The proposed sale covered 120 tracts totaling approximately 683,182 acres in the southern two-thirds of Cook Inlet between Kalgin Island on the north and the Barren Islands on the south.

January 18, 1977.—The Interior Department announced that it was making available a list of 217 tracts, totaling 1,141,818 acres, being considered for a possible oil and gas lease sale on the southern California Shelf, tentatively scheduled for March 1978. Tract selection for proposed OCS sale No. 48 follows a July 16, 1976 request for nominations by the Bureau of Land Management.

January 24, 1977.—Interior Secretary Cecil Andrus, citing the national interest, urged all operators on Federal onshore and offshore leases to increase production of natural gas from existing wells, consistent with safety and sound environmental practices, in an effort to help alleviate the winter gas shortage.

February 7, 1977.—Secretary Andrus announced the canceling of the sale of oil and gas leases in Alaska's Cook Inlet that had been scheduled for February 23, in Anchorage. It was indicated that a decision regarding the rescheduling of the sale during 1977 would be made within 90 days. Secretary Thomas Kleppe had announced the sale 2 days before the change in administrations.

February 17, 1977.—U.S. District Court Judge Jack B. Weinstein rescinded the mid-Atlantic lease sale No. 40 which had been held August 17, 1976. Subsequently, 93 tracts covering 529,466 acres were leased for a total of $1.128 billion in bonuses. Judge Weinstein charged that DOI ignored the rights of local governments; failed to consider the environmental impacts of offshore oil pipeline routes; overstated production estimates; understated production costs; and therefore violated the National Environmental Policy Act.

February 17, 1977.—Secretary Cecil Andrus ordered a comprehensive review of gas production in the Gulf of Mexico to insure that the maximum amount of gas is available from the OCS consistent with safety and good conservation practices. This action was prompted by a contracted preliminary investigation of four fields in the Gulf of Mexico, which represent 10 percent of gas production in the Gulf. The report found that production had sharply fallen over the past 2 years; it was substantially below the maximum efficient rate of production (MER's); and that the MER's themselves had been substantially reduced over the past 2 years.

February 18, 1977.—The Interior Department announced that it was delaying the call for nominations and comment on the General Pacific OCS sale until the area can be better defined. The off-coast Oregon, Washington, and northern California area could include about 60 million acres.

February 22, 1977.—The Federal Register gave notice that about 25,000 barrels of royalty oil from OCS lands would be available for sale to small refiners as of July 1, 1977, with next offerings on an annual basis.

February 24, 1977.—The Ad Hoc Select Committee on the Outer Continental Shelf held its first formal organizational meeting since being reconstituted.

March 1, 1977.—U.S. enforcement of the 200-mile jurisdictional limit to delineate a "Fishery Conservation Zone" became effective.

March 1, 1977.—Secretary Cecil D. Andrus asked the Justice Department to appeal the Federal court order issued by Judge Weinstein to void the Baltimore Canyon lease sale.

March 1, 1977.—President Carter sent to Capitol Hill his energy reorganization bill.

March 3, 1977.—The Ad Hoc Committee on the OCS began its hearings on H.R. 1614, focusing on the views of the Carter administration. Testimony was given by Secretary of the Interior, Cecil Andrus, and the Administrator of F.E.A., John O'Leary.

March 3, 1977.—A 6-month extension for Aminoil Oil Co., to develop a Federal lease in the Gulf of Mexico was refused by the Interior Department. In this precedent-setting move, the company was given until March 7, 1977, to find a rig to drill a seventh exploratory well. The move marked a determined effort on the part of Interior to enforce "due diligence".

March 7, 1977.—Monte Canfield, Director, Energy and Minerals Division, GAO, briefed the House Ad Hoc Select Committee on OCS on Lease Sale No. 35, off southern California.

March 7, 1977.—The General Accounting Office released a report on "Outer Continental Shelf Sale No. 35—Problems Selecting and Evaluating Land to Lease." The GAO stated that inadequate resource information on the tracts had been obtained by Interior due among other things to pressure to lease a predetermined number of acres. Hence, unreliable tract values were determined both high and low, and estimated revenues were overestimated by five times. Taking place on December 11, 1975, the sale netted $417 million; and 56 oil and gas leases were let. GAO recommended passage of H.R. 1614 (S. 9) to improve OCS development.

March 7, 1977.—Tenneco, Inc., the giant natural resources conglomerate, conceded that as much as 300 billion cubic feet of natural gas has been diverted to one of its own subsidiaries since 1963. This gas should have been obligated for sale in the interstate market, instead the gas generated higher intrastate rates.

March 11, 1977.—Interior announced the creation of a departmental committee to review more than 60 Federal oil and gas leases that are currently not in production as part of a "due diligence" campaign.

March 21, 1977.—A Panamanian tanker with 546,000 gallons of oil aboard split apart about 125 miles southeast of Wilmington, N.C.

March 23, 1977.—Further enforcing "due diligence," the Interior Department ordered two companies holding seven leases to deliver details concerning their non-producing oil and gas leases during a brief extension through April 1.

March 24, 1977.—Secretary Andrus announced approvingly that the Second Circuit Court of Appeals in New York had granted the request for expedited action on the part of the Department concerning the Weinstein decision. Until the outcome of the appeal is determined, all action by the USGS on applications for exploration permits in the sale area was to be delayed.

March 28, 1977.—Additional administration witnesses were heard by the House OCS Committee. Witnesses included Charles Warren, Chairman of the Council on Environmental Quality; E. H. Clark, Jr., Member of the National Advisory Committee on Oceans and Atmosphere; Dr. Robert White, Administrator of NOAA, and Mr. Robert Knecht, Acting Associate Administrator of Commerce's Office of Coastal Zone Management.

April 4, 1977.—The House OCS Committee continued hearings on H. R. 1614, with Administration witnesses from the Department of Defense, the Department of Labor and the U.S. Coast Guard.

April 5, 1977.—The House OCS Committee finished the first phase of its hearings on H.R. 1614, centered on the views of the executive branch. Appearing were witnesses from the Department of State, the Justice Department, the Environmental Protection Agency, and the Federal Trade Commission.

April 11, 1977.—A memorandum of understanding on offshore safety was signed by the USGS and the U.S. Coast Guard. The agreement will coordinate safety requirements concerning the design, construction, and operation of U.S. flag mobile offshore drilling units on the OCS.

April 12, 1977.—The Federal Register announced the availability for review of a draft environmental impact statement on the proposed Western Gulf of Alaska OCS Sale No. 46. A decision on the timetable of any such proposed sale of 3.2 million acres off Kodiak Island was reserved.

April 20, 1977.—Interior announced the release of a draft environmental impact statement on the proposed OCS lease sale No. 45 in the Gulf off the coasts of Texas and Louisiana of 120 tracts totaling 582,856 acres, scheduled for the winter of 1977. The process was initiated by a tract selection announcement, whereby the BLM in consultation with the USGS handled the tract selection without first calling for nominations and comments.

April 22, 1977.—The blowout on the Bravo Platform, operated by the Phillips Petroleum Co. in the Ekofisk field of the Norwegian North Sea occurred. Over a 7-day period the blowout spilled over 147,000 barrels of oil and deposited an oil slick over as much as 300 square miles, before it was capped by the famed oil well disaster expert "Red" Adair and his crew. The blowout demonstrated the environmental threat posed by offshore drilling, the inadequacy of offshore pollution cleanup technology and the inadequacy of onsite safety equipment and regulation.

April 29, 1977.—The President releases his "National Energy Plan," specifically endorsing legislation (H.R. 1614; S. 9) to revise the OCS Act of 1953, as an essential part of a comprehensive energy program.

May 1, 1977.— It was reported that the Canadian Government was postponing a decision on whether to permit drilling for oil in the Arctic waters of the Beaufort Sea pending a study of the North Sea Bravo blowout.

May 2, 1977.—The FEA charged that, during a period from 1973 to 1975, 20 oil firms inflated the costs of imported crude oil by as much as $336 million in transactions with their foreign affiliates.

May 2, 1977.—A USGS study detailed hazards to oil and gas development off the cost of southern California, including the Santa Barbara Channel. The three main types of hazards identified were seismicity and faulting; sea-floor instability; and hydrocarbon seeps.

May 2, 1977.—The USGS made public a new offshore platform structural inspection program to insure as much as possible that offshore platforms are constructed to withstand the forces of nature, as offshore drilling moves out to deeper, and more hostile "frontier" areas.

May 4, 1977.—The House Merchant Marine Committee ordered reported H.R. 6803, a bill to establish a single national liability and compensation system for oil spill cleanup and compensation for damages.

May 9–12, 1977.—The House OCS Committee held the second phase of its hearings on H.R. 1614, a bill to reform the 1953 OCS Lands Act. Witnesses were heard from the oil and gas industry, related service industries, environmental groups, state and local government leaders, unions, associations, citizens and other interested groups.

May 11, 1977.—The Senate Committee on Energy and National Resources began markup on the OCS reform bill S. 9 (companion to H.R. 1614).

May 13, 1977.—The U.S. Coast Guard proposed new safety standards for all tankers operating in U.S. ports to prevent accidental oil

spills. Tankers contracted for after 1979 would be required to have double bottoms.

May 17, 1977.—Secretary Cecil D. Andrus outlined his new policy for oil and gas leasing on the OCS, presenting a new, more realistic planning schedule for lease sales through 1978 to replace the one issued in January by his predecessor, Secretary Thomas Kleppe. Sales in environmentally sensitive areas off Alaska, California, and the Southern Atlantic Coast were deferred. Secretary Andrus indicated that the final decision on all sales would be made after all NEPA requirements had been met and after consultation with the governments of the affected States.

May 19, 1977.—OCS Sale No. 42, covering 225 tracts totaling 1.085-228 acres in the Gulf of Mexico was announced for June 23, 1977.

May 23, 1977.—In a far-ranging environmental message to Congress, President Carter endorsed proposals in Congress (H.R. 1614; S. 9) to require a pause between exploration and development of the Outer Continental Shelf and cancellation of leases with compensation where development could create unacceptable environmental risks. Also, new procedures for preparing environmental impact statements for the OCS were ordered so as to satisfy the information requirements of State and local governments.

May 27, 1977.—Nominations and comments for proposed OCS sale No. 65, scheduled for August 1978 in the Eastern Gulf of Mexico, were sought.

June 8, 1977.—The Interior Department announced the cancellation of two Federal oil and gas leases in the Gulf of Mexico, citing a lack of drilling activity.

June 22, 1977.—Eight Western European nations agreed on a program to deal with oil-well blowouts and pollution in the North Sea.

June 23, 1977.—OCS Sale No. 42 was held in New Orleans netting $1.2 billion high bids for the right to develop oil and gas leases in the Gulf of Mexico.

June 28, 1977.—The GAO released its report on "Outer Continental Shelf Sale 40—Inadequate Data Used to Select And Evaluate Lands to Lease." Its criticisms and conclusions were similar to those enumerated in GAO's report on OCS Lease Sale No. 35. Although industry bidding was greater, this did not mean the most productive areas were offered. An exploration program to appraise our OCS resources was recommended.

June 29, 1977.—Secretary Andrus endorsed new conditions for onshore facilities proposed by the State of California. The proposal would govern the storage, treatment, and transportation of oil produced by Exxon from the Sante Ynez unit of the Santa Barbara Channel.

June 29, 1977.—The OCS Advisory Board urged the enactment of Outer Continental Shelf Lands Act Amendments.

June 30, 1977.—The House Select OCS Committee began markup of H.R. 1614.

July 11, 1977.—It was announced that the USGS proposed the standardization of all orders regulating the exploration, development, and production of oil and gas on the OCS.

July 14, 1977.—Interior announced the publication of proposed rulemaking regarding lease suspensions and the timing and type of environmental studies to be undertaken. The proposals were designed

to realize certain objectives of the environmental message enunciated by President Carter on May 23, 1977.

July 14–15, 1977.—The Senate debated, amended and passed S. 9 (companion to H.R. 1614). The vote on final passage was 60–18.

July 22, 1977.—The Department of Labor promulgated final worker's safety standards for divers. The standards specifically apply to OCS activities.

July 26, 1977.—In a late night session, the Federal Power Commission adopted a settlement with Texaco, Inc. regarding the illegal burning in its Port Arthur, Tex. refineries of approximately 200 billion cubic feet of Federal-domain gas, or enough to heat 325,000 plus homes a year. Under the agreement Texaco will reportedly make amends by selling an equivalent amount to interstate pipelines.

July 27, 1977.—The House Select OCS Committee ended 8 days of markup on H.R. 1614 and ordered the bill reported to the House by a vote of 11–8.

August 25, 1977.—The Court of Appeals for the Second Circuit reversed an earlier decision by a District Judge rescinding the Baltimore Canyon Lease Sale No. 40; citing its confidence in a new Secretary of the Interior to, among other things, hold a second EIS prior to development.

OCS ENERGY RESOURCE DEVELOPMENT IN A SETTING OF CONFLICT

If the Santa Barbara oil spill raised the level of environmental consciousness about OCS operations, the shortfall of domestic energy production and the Arab oil embargo of 1973 had an equally dramatic impact. The potential oil and gas resources on the OCS could reduce the country's dependence on foreign energy supplies and thus its economic vulnerability in relation to the OPEC nations.

Both trains of thought—environmental protection and the acceleration of OCS oil and gas development—competed for primary ranking in the list of national priorities. President Nixon called for stepping up the OCS lease sale schedule while, at the same time, environmental and citizen organizations, commercial and recreational fishing interests, and other groups, expressed public concern over the possible effects of the proposed rapid development.

Intermixed in this debate were new dimensions of federal/state relations, the genesis for what was President Nixon's theory on New Federalism. State and local governments argued that it was their beaches, estuaries, and other shoreline areas which could be severely damaged by an OCS-related spill. It was their onshore coastal lands which would be the sites for the necessary support facilities. It was their coastal communities which would experience possible "boom town" effects from the offshore development. Yet, this was a federal decision and a federally-administered process over which the states received no financial assistance. Monies received from OCS bonuses, rentals and royalties went into the United States Treasury—not those of the affected coastal states.

Consequently, while States and local governments were joining forces with some environmental groups based on ecological concerns, they were also expressing their disapproval of the Interior Department's OCS leasing process. It is, many coastal State governors argued, a process in which the affected governments had no true participation and no access to important data. The 1975 *United States* v.

Maine case, in which thirteen Atlantic coast States claimed ownership of the continental shelf off their shores, can be viewed, in part, as a symbolic protest against the policies and procedures of the Federal Government in general and the Department of the Interior, in particular.

A number of lawsuits have been filed by States and communities to postpone proposed OCS lease sales on the Interior Department's accelerated schedule.

Despite this, three different trends have been manifested in recent OCS lease sales, although it is premature to judge if these patterns will persist.

There has been a considerable slippage in the Interior Department's lease sales schedule. Although six sales were scheduled for 1975, only four were conducted. Six sales were also planned for 1976, but again only four were held. One sale has been invalidated (OCS Sale No. 40).

The number of tracts actually offered for sale (compared with the number nominated) and the number actually bid on (compared with the number offered) appears to be smaller than what would be expected under an accelerated OCS program. The former Secretary of the Interior withdrew a number of tracts shortly before the California sale in December, 1975 and the Alaskan sale in April, 1976. And, in both cases, the oil companies bid on significantly fewer tracts than those offered. Again in the August, 1976 Baltimore Canyon lease sale, a little less than two-thirds of the tracts offered received bids. (See table 3.)[28]

On the part of the Executive, the accelerated leasing program has undergone a serious review by the new Secretary of Interior. The previous administration announced a new leasing program less than two weeks before emplacement of the new administration. The new Secretary, upon his taking office, promptly canceled the upcoming sale of oil and gas leases in Alaska's Cook Inlet, previously publicized by the former Secretary of Interior 2 days before the change in administrations. Subsequently a revised leasing schedule was published in May, 1977. For comparative purposes the January and May leasing schedules are presented in figures 6 and 7, respectively.

[28] To date the Interior Department has collected roughly $24.0 billion in OCS bonuses, rentals and royalties.

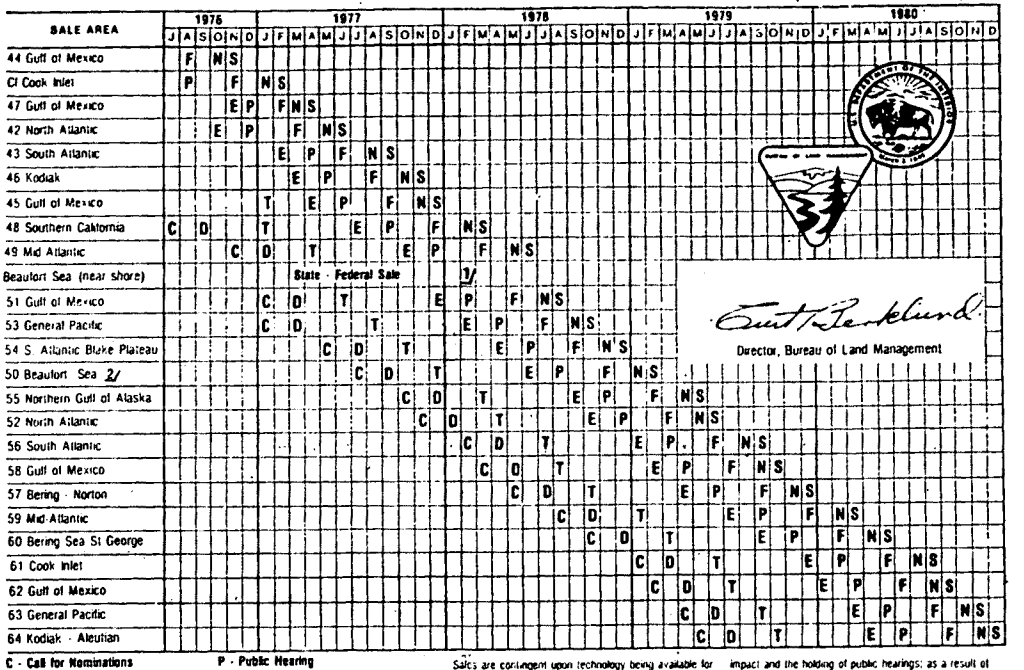
TABLE 3.—OCS LEASE SALES

OCS sale number	Date of sale	State	Number of tracts offered	Acres offered	Number of tracts bid on	Acres bid on	Number of tracts leased	Acres leased	Total bonus
(1)	Jan. 14, 1969	Louisiana	38	96, 389	26	61, 628	20	48, 504	$44, 037, 339
(1)	Dec. 16, 1969	do	27	93, 764	16	60, 153	16	60, 153	66, 908, 196
(1)	July 21, 1970	do	34	73, 360	21	50, 889	19	44, 642	97, 769, 013
(1)	Dec. 15, 1970	do	127	593, 485	127	593, 485	118	551, 398	815, 784, 660
(1)	Nov. 4, 1971	do	18	55, 872	13	42, 222	11	37, 222	95, 304, 523
(1)	Sept. 12, 1972	do	78	366, 682	74	346, 693	62	290, 321	585, 827, 925
(1)	Dec. 19, 1972	do	132	604, 029	119	548, 374	116	535, 874	1, 655, 519, 631
(1)	June 19, 1973	Texas-Louisiana	129	697, 643	104	566, 573	100	547, 173	1, 531, 397, 380
(1)	Dec. 20, 1973	Mississippi, Alabama, and Florida.	147	817, 297	89	496, 917	87	485, 397	1, 491, 065, 231
(1)	Mar. 28, 1974	Louisiana	206	930, 918	114	522, 397	91	421, 218	2, 092, 510, 854
(1)	May 29, 1974	Texas	245	1, 355, 678	123	680, 335	102	565, 112	1, 471, 851, 831
(1)	July 30, 1974	Louisiana-Texas	258	1, 298, 739	49	249, 704	19	100, 241	30, 236, 800
(1)	Oct. 16, 1974	Louisiana	287	1, 370, 031	149	693, 172	136	634, 832	1, 427, 242, 455
(1)	do	Louisiana Royalty	10	51, 515	8	40, 755	8	40, 755	1, 018, 875
37	Feb. 4, 1975	Texas	515	2, 870, 344	143	796, 367	113	626, 585	274, 690, 955
38	May 28, 1975	Louisiana-Texas	283	1, 346, 432	102	486, 327	86	406, 912	232, 916, 050
38a	July 29, 1975	do	345	1, 772, 958	80	408, 009	66	336, 301	163, 214, 036
35	Dec. 11, 1975	So. California	231	1, 258, 189	70	384, 540	56	310, 019	417, 312, 141
41	Feb. 18, 1976	Gulf of Mexico	132	687, 604	41	191, 718	34	161, 286	175, 976, 433
39	Apr. 13, 1976	Gulf of Alaska	189	1, 008, 499	81	465, 719	76	409, 057	559, 836, 587
40	Aug. 17, 1976	Delaware, Maryland, and New Jersey.	154	876, 750	101	575, 012	93	529, 466	1, 127, 936, 425
44	Nov. 16, 1976	Texas, Louisiana	61	254, 488	48	201, 825	43	178, 127	379, 148, 962
47	June 23, 1977	Texas, Louisiana, Mississippi, and Alabama.	223	1, 074, 536	152	739, 326	124	605, 427	1, 170, 093, 432
Total			3, 869	19, 555, 202	1, 850	9, 173, 944	1, 596	7, 926, 082	16, 009, 599, 764

[1] The numbering of OCS lease sales began in 1975.

PROPOSED OCS PLANNING SCHEDULE

January 1977
(Revises June 1975 Schedule)



Director, Bureau of Land Management

C - Call for Nominations
D - Nominations Due
T - Announcement of Tracts
E - Draft Environmental statement
1/ State May Conduct Sale

P - Public Hearing
F - Final Environmental Statement
N - Notice of Sale
S - Sale
2/ Within 60 Foot Isobath or Technology Capability

Sales are contingent upon technology being available for exploration and development. A decision whether to hold any of the lease sales listed will not be made until completion of all necessary studies of the environmental impact and the holding of public hearings; as a result of the environmental, technical, and economic studies employed in the decision making process, a decision may, in fact, be made not to hold any sale on this schedule.

FIGURE 6

PROPOSED OCS PLANNING SCHEDULE FOR SALES THROUGH 1978

May 1977

SALE AREA	1976								1977												1978												1979												1980							
	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
47 Gulf of Mexico			T				E	P		F				N	S																																					
CI Cook Inlet			E	P				F										N	S																																		
42 N. Atlantic						E		P								F		N	S																																		
43 S. Atlantic										E	P								F		N	S																															
45 Gulf of Mexico								T				E		P						F		N	S																													
65 Eastern Gulf of Mexico													C	D	T						E		P			F	N	S																							
51 Gulf of Mexico										C		D			T							E		P			F			N	S																			
49 Mid-Atlantic							C		D							T							E		P				F			N	S																	

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Sales are contingent upon technology being available for exploration and development. A decision whether to hold any of the lease sales listed will not be made until completion of all necessary studies of the environmental impact and the holding of public hearings; as a result of the environmental, technical, and economic studies employed in the decision making process, a decision may, in fact, be made not to hold any sale on this schedule.

U.S. DEPARTMENT OF THE INTERIOR

U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT

Cecil D. Andrus

SECRETARY

Figure 7

Recent bonus bids have been somewhat lower than anticipated by the Interior Department. The December, 1975, California sale is particularly noteworthy in this regard. Interior predicted that bidding might run as high as $2 billion, although only $417.3 million was finally accepted. The fact that in lease sale 40 greater bonus bids were received than had been projected by Interior, only underscores the unrealiability of DOI's tracts evaluation and the data upon which they are based.

Clearly, the explanation for these apparent trends is multidimensional. The lack of experience in frontier areas (and, in Alaska, hazardous conditions); deeper OCS depths requiring more sophisticated and expensive equipment and technologies; the unpredictability of an accelerated lease schedule itself which may require a more rapid expenditure of capital for bonus money; the potential threat of state and community law suits to block the location of onshore facilities; and the continued opposition of some groups to stepping up OCS development are all relevant factors in explaining these recent patterns.

In brief, the "shortfall" in recent OCS leasing activity may be the result of a myriad of uncertainties. Some, of course, are beyond the control of legislation. Others, however, are subject to resolution by congressional and Executive action.

THE CONGRESSIONAL RESPONSE

The first major congressional action to amend the Outer Continental Shelf Lands Act occurred during the second session of the 93d Congress.

On September 18, 1974, the Senate passed S. 3221, the Energy Supply Act of 1974. S. 3221 was an omnibus bill providing for changes in the bidding system, OCS revenues to the States, strict liability for accidents, increased exploration by the Government, increased inspections of installations by the Government, increased research of oil and gas resources, strict safety and environmental regulations, citizen suits to enforce provisions of the OCS Lands Act, strict liability for oil spills, power to the governor of the adjacent states to request postponent of lease sales, requirements that areas with less environmental hazard be leased first, and establishment of a national strategic energy reserve. No action was taken by the House on this bill.

In the 94th Congress, the Senate again took the first step to amend the Outer Continental Shelf Lands Act, having established a public record during its consideration of S. 3221. On July 30, 1975, by a vote of 67–19, the Senate passed S. 521, a bill to provide for the orderly exploration of energy resources on the OCS.

On July 16, 1975, the Senate passed S. 586 by a 73–15 vote. This legislation amended the Coastal Zone Management Act of 1972 and included the establishment of a coastal energy facility impact program. By the use of grants, loans, automatic OCS-related payments, and federally-guaranteed State and local bonds, S. 586 provided a Federal assistance network to aid coastal States which are likely to be impacted by OCS and other types of energy activities in the coastal zone.

In the House, S. 586 was referred to the Oceanography Subcommittee of the Merchant Marine and Fisheries Committee. On February 4, 1976, the full committee reported its version of the Senate legislation on a 36–0 vote. H.R. 3981 was passed by the House on March 11, 1976 on a 370–14 vote. A conference committee met on May 17, 1976 to reconcile the differences between the bills, and finished its work on June 8, 1976. The conference report was agreed to by voice vote in the Senate on June 29, 1976, and was agreed to by the House the following day by a vote of 381–14. On July 26, 1976 President Ford signed the Coastal Zone Management Act Amendments of 1976 into law.

Whereas the amendments to the Coastal Zone Management Act were within purview of only one Committee in the House, jurisdiction over the Outer Continental Shelf program was highly fragmented. A special procedure had to be adopted.

THE HOUSE OF REPRESENTATIVES: ESTABLISHMENT OF A SPECIAL COMMITTEE

Early in the first session of the 94th Congress, some Members of the House of Representatives became concerned that bills to amend the Outer Continental Shelf Lands Act of 1953, would have to be referred to three or more committees of the House pursuant to rule X, clause 5(c). It was recognized that it would be extraordinarily difficult and

time-consuming for the House to act on a major revision of the Outer Continental Shelf Lands Act if several committees were to exercise concurrent jurisdiction over different aspects of any new legislation. Action of this legislation needed to be prompt especially as the administration was accelerating the Federal program for the leasing of Outer Continental Shelf lands to allow oil and gas exploration and production.

In March of 1975, it was recommended to the Speaker of the House that a special committee be created for the sole purpose of considering such legislation and reporting it to the full House, and that the special committee be composed of members of the various committees with jurisdiction in this area. Therefore, on April 22, 1975, then Majority Leader Thomas P. O'Neill introduced H. Res. 412, requesting the establishment of an Ad Hoc Select Committee on Outer Continental Shelf. [29] Membership of, and staff for, this special committee was to be drawn from the Committee on Merchant Marine and Fisheries, the Committee on Interior and Insular Affairs, and the Committee on the Judiciary. On the same day, Hon. John M. Murphy, Peter W. Rodino, and Leonor K. Sullivan introduced H.R. 6218, a comprehensive bill to amend the OCSLA. That day the House passed H. Res. 412, by unanimous consent, and the Ad Hoc Committee was established. H.R. 6218 was referred to the Select Committee, which was directed to transmit its findings and report on this matter to the full House by January 31, 1976. By House Resolutions 977 and 1121, the reporting day was extended to May 4, 1976.

Questions of jurisdiction and organization were resolved during the first three meetings of the committee on April 30, May 13, and June 24, 1975, and an additional three members were added to the committee, bringing it to a total of 19 members. The first inspections and set of hearings were held in Louisiana, where the committee visited off-shore drilling platforms, an oil refinery, and other OCS-related industry.

Hearings were begun on June 7 in New Orleans, where 32 witnesses testified, including the Governors of Louisiana and Texas, representatives of Louisiana state and local government, of oil industry, of onshore service industry, of environmental groups, and representatives of regional offices of Federal agencies having jurisdiction over various aspects of OCS development.

Three days of hearings were then held in Washington, D.C. on June 17, 18, and 19, where the committee heard testimony from Members of Congress, Federal agencies, and representatives of environmental, professional, industry, and governmental associations.

On June 26, members of the committee and staff flew to London, Scotland, and Norway on a 7-day series of briefings, inspections, and meetings dealing with oil and gas exploration and development in the North Sea.

Hearings were held in New York City on July 18 and 19, 1975, to consider the problems related to expected OCS development off the New York and northern New Jersey coast. Prior to the hearings, the committee attended a briefing presented by regional representatives of the Coast Guard, Environmental Protection Agency, Federal Energy

[29] New rule X clause 5(c) adopted Jan. 3, 1975, allows the Speaker to refer a bill simultaneously to two or more committees. Prior to the adoption of this rule, a bill or resolution could not be divided for multiple Committee referral.

Administration and the Interior Department's Bureau of Land Management. Another briefing was presented by Rutgers University based on data of an Office of Technology Assessment project as to possible impact of expected OCS activities in the Baltimore Canyon Trough off New Jersey. Following the briefings, the committee heard from a series of panels representing Government, industry, environmentalists, labor, business and technology. A total of 33 witnesses presented their views to the committee over the course of these 2 days.

On July 25 and 26, 1975, further hearings were held in Ocean City, N.J., and Philadelphia, Pa. as to expected OCS activity off the New Jersey coast. The committee toured the New Jersey coastal areas to familiarize itself with these potentially impacted areas.

From August 2 to August 8, 1975, committee members and staff conducted a series of field hearings and on-site oil and gas facility inspections in California and Alaska. The hearings held on August 2, in Los Angeles, Calif. included testimony from the State's Governor and the City's mayor, in addition to representatives of industry, labor, consumer, and environmental groups. On August 3, 1975, en route to San Francisco, the committee members and staff inspected offshore platforms and oil facilities in Santa Barbara, Calif., site of the 1969 oil spill. The hearings held on August 4, 1975, in San Francisco, concluded the California segment of the trip.

Hearings were then held on August 5 and 6, 1975, in Yakutat and Cordova, Alaska. Testimony was heard from government officials, including the Governor of Alaska, and local citizens and fishermen. On the morning of August 8, 1975, the members and staff participated in a tour of an onshore gas processing facility in Kenai. That afternoon, concluding hearings were held in Anchorage, Alaska. Prior to returning to Washington, D.C., the committee inspected drilling operations on the North Slope of Alaska at Prudhoe Bay.

Hearings were then held in New England to consider expected OCS activity in the Georges' Bank area. One day of hearings on September 12, 1975, was held in New London, Conn. where numerous (39) witnesses testified, including the Governors of Connecticut and Rhode Island. Prior to the hearings, the committee attended a briefing session with Coast Guard, Interior Department and Environmental Protection Agency representatives. On September 13, 1975, the committee heard testimony in Boston, Mass. from Members of Congress, the Governors of Massachusetts, New Hampshire, and Maine, and numerous panels representing government, labor, industry, and environmentalists.

The hearings held on September 26, 1975, in Ocean City, Md., as to expected OCS activity off Maryland and Delaware completed the committee's scheduled field hearings and inspections of oil and gas facilities in potentially impacted areas.

During October, the committee attended 3 days of briefings held in Washington, D.C., presented by the American Petroleum Institute on October 21, 1975, the Congressional Research Service of the Library of Congress on October 22, 1975, and by the American Association of Petroleum Geologists on October 24, 1975.

On November 13, 14, and 20, 1975, the final set of hearings was completed in Washington, D.C.

On December 16, 1975, the committee held its first markup session for the presentation and discussion of a new draft of H.R. 6218.

Markup sessions of the committee were held on February 25 and 26, 1976, and both a majority and minority draft of H.R. 6218 were presented. Markup was continued on March 17, 18, 23, 24, 25, 30, and 31, 1976. Over 190 amendments were submitted for consideration by members of the committee.

Final markup sessions were held on April 6 and 7, 1976, and on April 13, 1976, and H.R. 6218 was reported out of committee.

As evidenced by the above discussion, the record of the Select Committee during the 94th Congress was one of substantial achievement. The committee engaged in 8 months of investigative work involving staff studies, visits to oil drilling sites, briefings, and hearings. The members heard from more than 300 witnesses and compiled a hearing record totaling more than 8,000 pages in more than 15 cities and in the North Sea. The investigative phase was followed by a markup period of 4 months.

The bill was reported to the House on May 4, 1976 (See House Report No. 94–1084). The bill was considered by the House on June 4, 11, 14, and 21, 1976. After 10 hours of debate and the consideration of some 80 amendments, H.R. 6218 overwhelmingly passed the House by a margin of 247–140.

The comparable Senate-passed bill (S. 521) was different than the House version and a resolution of the differences between the two bills required a conference. After some 25 Senate amendments to the House version were accepted by the conferees, the conference report was filed with the House and Senate on September 20, 1976 (House Report No. 94–1632).

Under the rules, the conference report had to be considered initially by the House. Debate on the report began on September 23, 1976, and continued on September 28th. After lengthy consideration, a motion was offered to recommit the report back to conference committee to delete one provision and make certain modifications in another. The motion to recommit was approved by a 198–194 vote.

This vote can be attributed to the threat of a veto on the part of the then administration, a scheduling logjam on the House floor, a threat of a Senate filibuster, and a national advertising campaign against the bill.

As Congress was scheduled to adjourn sine die within a few days and, because of the heavy schedule of other conference committees on which Senate Members of the OCS conference were obligated to participate, and the very real prospect of a filibuster on the Senate floor, there was not sufficient time for the reconsideration of the bill.[29] Consequently, no further action was taken on S. 521.

The recommittal vote clearly did not represent the desire of Congress or the people not to have OCS reform. The committee and members were flooded with demands for OCS amendments—and

[29] A conference, even if immediately convened, would not report until Wednesday, Sept. 29, 1976; if the House acted on Thursday, assuming the 3-day rule was waived, and delivered the report to the Senate that day, a filibuster would commence and thus a cloture petition would have to be filed which could not be considered until Saturday. If cloture was voted, there would still be 35 to 45 hours of debate—1 hour for each Senator is allowed after cloture—to follow. Yet both Houses would be adjourning on Saturday at the latest. Effectively, the motion to recommit killed the bill for the 94th Congress.

prompt action—in the 95th Congress. OCS reforms became a national issue—showing the marked differences between the two Presidential candidates. The Democratic nominee called for OCS reforms such as those passed by both Houses and recommitted a few days prior to adjournment. He proposed support and thus passage of this legislation—as one of his two key energy-environment proposals—upon his election.

Almost as soon as the 95th Congress convened, the Outer Continental Shelf reform legislation as reported from the Conference on S. 521 was introduced in both Houses, becoming H.R. 1614, and S. 9. On January 11, 1977, H. Res. 97 reestablished the Ad Hoc Select Committee to complete its mandate to establish a policy for the management of oil and natural gas in the OCS, to protect the marine and coastal environment, to amend the OCS Lands Act, and for other purposes.

The committee held its first formal organizational meeting on February 24, 1977, when it approved the committee rules, budget, and staff. The committee vigorously began its work with a renewed sense of urgency and confidence. Perhaps the most significant change in the legislative environment was the inauguration of a new administration. The new Secretary of the Interior indicated, in a number of public statements, general support for revision of the 1953 OCS law.

Specifically, on January 17, 1977, in his nomination hearings, the new Secretary of Interior-designate, Governor Cecil D. Andrus stated, "The President-elect and myself have both said publicly, we support the * * * amendments to the Outer Continental Shelf legislation. I agree they should have high priority." [31]

Governor Andrus also voiced support for greater environmental protection, the enforcement of due diligence to discourage speculation, greater State participation in the decisionmaking process, and that exploration and development occur promptly.

Hearings on H.R. 1614 commenced with the presentation of the favorable position of the Carter administration. On March 3, 1977, Secretary Andrus and John F. O'Leary, Administrator of FEA, presented testimony before the Select Committee. On March 7, 1977, Monte Canfield, Director, Energy and Minerals Division of the General Accounting Office briefed the committee on their new report on "Outer Continental Shelf Sale No. 35—Problems Selecting and Evaluating Lands to Lease." Additional administration witnesses were heard on March 28, 1977 and February 4 and 5.

The second phase of the Select Committee hearings included representatives from oil and gas companies and associations, industry-related companies, unions, environmentalists, State and local government officials, and citizens. The hearings ran all day May 9, 10, 11, and 12, 1977, and 45 witnesses representing all viewpoints were heard.

The final day of hearings was held on June 9, 1977, with Secretary Andrus, who restated the administration's position in general support of H.R. 1614, and addressed issues highlighted by over 4 months of hearings. Immediately after the hearing on June 9, the committee

[31] U.S. Senate, "The Proposed Nomination of Governor Cecil D. Andrus to be Secretary of the Interior." Hearings before the Committee on Interior and Insular Affairs, 95th Cong., 1st sess., Report No. 95-4, Jan. 17 and 18, 1977.

approved a new staff draft of H.R. 1614, as a working document for mark up. The new draft was designed to incorporate new and modified language in problem areas identified by the hearing process.

The official hearing record of the Select Committee comprises over 1,700 pages of testimony this session alone. This effort was supplemented by countless hours of preparation by staff and members, including meetings and discussions with the Interior Department, and other agencies, with industry, environmental groups, union officials, staffs of various committees and others. The activities of the Senate Energy and Natural Resources Committee were monitored, and coordination with the staffs effected. In addition, the committee members and staff have participated in numerous OCS-related meetings in other forums.

The committee markup of H.R. 1614 was extensive. Sessions were held on June 30, July 12, 20, 21, 22, 25, 26, and 27, 1977. Over 75 primary amendments were considered, and scores of amendments thereto. After much deliberation, the bill was ordered reported on July 27 by a vote of 11 to 8.

V. Need for H.R. 1614

On January 23, 1974, President Nixon announced that he had directed the Secretary of the Interior to increase the amount of acreage on the Outer Continental Shelf ("OCS") to be leased to private industry in 1975 to ten million acres.

In one year, President Nixon proposed, the country was to lease an amount of offshore territory almost equal to the amount leased since the OCS program began in October 1954. The proposal was part of an overall strategy to deal with the Nation's energy problems.

The authority for this proposal was the Outer Continental Shelf Lands Act, adopted in 1953. This Act provides for the jurisdiction of the United States over the submerged lands of Outer Continental Shelf and authorizes the Secretary of the Interior to lease these lands for oil and gas production.

The 10-million-acre lease proposal crystalized growing concern on the part of many in Congress and elsewhere about the open-ended authority granted in the 23-year-old legislation. The existing law gives little guidance to the Secretary of the Interior on how he is to go about leasing OCS lands.

The country's increased reliance on petroleum recovered from underneath the ocean, made more apparent by the temporary oil embargo from the Middle East beginning in the fall of 1973, had already triggered a number of examinations of the manner in which offshore resources were explored and recovered in this country. Some of these studies were underway at the time of President Nixon's dramatic proposal; others were triggered by it.

Numerous studies, both past and present, have pointed to either deficiencies in the current methods of OCS leasing, or the opportunity for instituting improved methods. One such study, by the National Science Foundation in 1974, entitled "An Economic Analysis of Alternate OCS Petroleum Leasing Policies," found:

> The historical background * * * documents the limited development of leasing policy over the past 2 decades in sharp contrast with the dramatic changes in economic conditions

and social objectives. Specifically, past leasing strategies have not been changed in response to increased petroleum prices and development costs or to the increased geological uncertainty associated with greater reliance on and acceleration of leasing on the Outer Continental Shelf. In addition, society is considerably more conscious of environmental protection concerns than when leasing policy was established.

A. RECORD OF THE COMMITTEE

Congress responded to this concern by conducting its own research and by legislative action. In 1974, the Senate passed a comprehensive revision of the 1953 Act, but the action came too late in the session for the House to take up the matter.

Again in 1975, the Senate adopted an OCS Act, S. 521.

The House of Representatives also responded. So as to avoid committee jurisdictional disputes and thus avoid delays, the House established the first ad hoc committee, composed of members of several standing committees, permitted under the new rules adopted by the 94th Congress. Speaker Carl Albert named Congressman John M. Murphy of New York to be chairman of the Ad Hoc Select Committee on Outer Continental Shelf and charged the Committee with the responsibility of reporting to the House a revision of the original Act governing OCS operations.

The Ad Hoc Select Committee on the Outer Continental Shelf built up a substantial public record in the 94th Congress. It added to that record during the 95th Congress with witnesses representing all points of view—including environmentalists, Federal, State and local officials, representatives from energy industries, large and small, and their suppliers and subcontractors, and ordinary citizens. It then weighed the evidence carefully. The Ad Hoc Committee became convinced that the OCS Lands Act had to be revised.[32]

Early in the committee's review of the OCS Act of 1953, during the 94th Congress, Senator Henry Jackson, Chairman of the then Senate Interior Committee and now Chairman of the Senate Committee on Energy and Natural Resources, and chief sponsor of the Senate OCS legislation, testified before the committee about the basic need for new legislation.

In discussing the "vitally needed changes in the Outer Continental Shelf Lands Act of 1953," Senator Jackson stated that this 1953 law "did not provide clear policy guidance to govern (OCS) leasing. The bill has never been amended, though times and conditions have changed drastically in the intervening years. These developments (improved technology, decline of onshore production, increased importance of OCS resources, increased environmental and coastal awareness, new intergovernmental cooperation efforts, and accelerated lease schedules) emphasize the need for legislation that reflects the changes of the last 20 years and the growing importance of this great national resource."

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[32] Because of the extensive record (5 volumes) made by the Committee during the 94th Congress, which became the basis for legislative action in 1976, much of the information relied on by the committee in reviewing H.R. 1614 as introduced, in amending it, in markup, and finally in reporting it to the House, came from that record. The record of the 95th Congress, of course, was also substantial and relied upon. Both will be referred to in this discussion.

In California, location of the 1969 Santa Barbara oil spill, and one of the main sites included in the accelerated leasing program, Joe Bodovitz, Executive Director of the California Coastal Zone Conservation Commission, testified at the hearings during the 94th Congress:

> Several deficiencies in the present OCS leasing procedures under the Outer Continental Shelf Lands Act have contributed to the unhappy circumstance that in 2 months the Department of the Interior plans to make an irrevocable commitment to an indeterminate amount of oil and gas development offshore California, without having adequately assessed the extent to which such development will be consistent with coastal planning goals. [He identified three major deficiencies in the present system as inadequate information for Federal and State governments on the offshore resources, the need to better control environmental impact and the need to insure that offshore leasing is conducted in a manner consistent with State coastal planning efforts.]

The hopes of citizens and local and state governmental officials for new laws were aptly reflected by Los Angeles Mayor Tom Bradley. Speaking for a group of municipal officials in California, and reflecting the feelings of many of his colleagues around the country, Los Angeles Mayor Tom Bradley told the Committee in 1975:

> It is my hope that you will act quickly in the matter of reforming and amending the OCS Lands Act to bring it up to date, to bring it into the 1970's, instead of operating on a document that is certainly outdated * * * [The OCS Lands Act of 1953] was written at a time when oil was regarded as cheap and virtually unlimited. Enormous administrative power was centered in one man—the Secretary of the Interior—to maximize efficiency of resource development * * * Revision of the outdated act is essential * * *.

These concerns were restated and reemphasized this year. In submissions and testimony, representatives of the States of New York, Massachusetts, New Jersey, Delaware, California, Alaska, and Connecticut, all called for OCS reforms. Offshore development can and should occur, they all said, but only if modern legislation governs activities.

Similarly, local government representatives this year, in submissions and testimony from, for example, Ocean City, Md., Santa Barbara, Calif., the National Association of Counties, and Nassau County, emphasized their fears of uncontrolled exploitation and the negative impacts of such exploitation.

The original legislation providing essentially an open-ended grant of authority to the Secretary of the Interior to proceed with leasing on the Outer Continental Shelf, was based on what was, in 1954, an unproven technology, and on expectations that offshore production would be a relatively small supplement to the continued reliance on production from onshore fields.

This situation has changed dramatically. Now, according to U.S. Geological Survey estimates, fully one-third of the Nation's discoverable and producible oil reserves are offshore, as are 22 percent of our

natural gas deposits. A Congressional Research Service report issued in April 1976 for the committee declared that offshore production "can be the largest domestic source of oil and gas between now and the 1990's. The chances of finding large new fields on U.S. land are slim, except in Alaska."

Similar conclusions have been reached in recent reports to this committee this year. Most energy industry representatives and most Government specialists from the Federal Energy Administration, USGS, and the special energy office in the White House (now the Department of Energy) indicated that the only substantial new source of domestic oil and gas will be found in the OCS.

It is today's reliance, and tomorrow's dependence on OCS resources that demonstrates the need to reform OCS procedures and to provide new protections.

The committee found that the present law's grant of total discretion to the Secretary led to a situation where the petroleum industry had until recently, as will be discussed later, a too dominant voice in the setting of policy.

As found, among others, by the study entitled "Energy Under the Oceans: A Technology Assessment of OCS Oil and Gas Operations", prepared by a group at the University of Oklahoma, headed by Professor Don E. Kash:

> In the case of making and administering OCS policy, direct, continuous participation has been largely limited to the petroleum industry and government. Since government and industry have had almost identical policy objectives, policy has been made and administered with extraordinary ease * * *. Within the Department itself, many of the Secretary's advisors are either recruited from industry or are persons who have spent a part of their careers in industry. At the operational level, detailed OCS orders regulating OCS development have been and are the product of a process of industry-Government cooperation * * *.
>
> It is clear that the pattern of Government-industry relationships which have been developed, produced a very closed system for making and administering OCS policies. It is the closed character of this system which is being challenged at the present time.

Witnesses this year confirmed this conclusion and further stressed that this dominant voice was, in fact, limited to the larger oil companies. Under the present law's bid system, representatives of the American Gas Association testified the larger energy companies were able to totally dominate leasing.

Exploration techniques, such as on-structure dwelling, a representative of a smaller oil company said, were not allowed, despite requests, as the larger companies were not in favor of it.

Other witnesses confirmed that regulatory machinery was established often to suit the convenience of the industry. Provisions for hazardous working conditions were not, until recently, being promulgated because in part they were opposed by contractors. OCS orders for specific areas were often prepared, in draft form, by those who were to act in accordance with those orders. This close industry/

Federal Government cooperation has often disregarded the interests of state and local governments and the taxpayer.

State and local officials repeatedly testified that their dealings with the Department of the Interior were unsatisfactory. While many acknowledged improvements in the recent past, and expressed great confidence in the new Secretary of Interior, there was almost total unanimity that much more remained to be done to equip State and local officials with sufficient information to give them adequate time for assessment and to provide them with the opportunity they sought for a real role in offshore leasing policy decisions. The need for formal legislative change became evident.[33] This attitude was strongly expressed recently, on June 29, 1977, when the OCS Advisory Board, an organization established by the Department of Interior and consisting of state and local representatives, among others, called for passage of H.R. 1614. The resolution of the Board declared:

> Whereas, the coastal States and local jurisdictions adjacent to areas that are, or will be, subject to OCS development have routinely and continually supported the need for improvements in the OCS leasing and development process; and
>
> Whereas, such improvements include the need for greater consultation with, and participation by, State and local governments, a more meaningful and definitive role for the OCS Advisory Board, and greater protection for environmental values and resources; and
>
> Whereas, this support has been expressed in a variety of forms; and
>
> Whereas, OCS leasing and development are proceeding at a rapid pace without the needed legislative improvements being made; therefore, be it
>
> *Resolved*, That the OCS Advisory Board urges the Secretary to urge the United States Congress to take earliest possible action on legislation to amend the Outer Continental Shelf Lands Act to strengthen the role of State and local governments and the OCS Advisory Board in OCS leasing and development decision, and provide increased protection for environmental values and resources; and be it further
>
> *Resolved*, That the OCS Advisory Board recommends that the Department of the Interior support and work to achieve early passage of such amendments to the OCS Lands Act.

The efforts on the part of the Interior Department to meet the demands of the States to be included in the OCS leasing process were clearly inadequate until very recently. It was not until March 197

[33] Testimony from an impartial source on the inadequate role provided state and local governments was provided during the 94th Congress by the National Advisory Committee on Oceans and Atmosphere ("NACOA") a Presidentially-appointed body composed of experts in marine and atmospheric science, business and research. The Chairman of the body, Dr. William J. Hargis, the head of a State-supported marine research laboratory, told the Committee: "State and local governments have had almost no role in the decisions leading to the accelerated leasing program for the Outer Continental Shelf with regard to both the timing and the location of the proposed development. NACOA supports the intent of H.R. 6218 to assure that constal states are given the opportunity to participate in policy and planning decisions relating to management of the resources in the OCS. [Despite recent Department of the Interior attention to states]. NACOA has clearly stated it feels that legislation is needed to clarify this point and, therefore, supports the general concept of legislation such as that you are considering."

that an advisory board, with designated State representatives, was established, and even then its function was restricted to overseeing offshore environmental monitoring programs.

Under continued pressure from States, and in response to the hearings of the Ad Hoc Committee, Interior finally, in October 1975, set up an OCS Advisory Board with a limited policy role. The earlier body became the OCS Environmental Studies Advisory Committee and continues to work with the Department to obtain better and more comprehensive baseline studies and offshore environmental monitoring programs. Both of these steps, while welcomed, were long overdue and still fall short of giving States and local communities the involvement they should have.

As will be described later, the committee is confident that the new Secretary of Interior will establish new mechanisms for Federal-State-local coordination. Nevertheless, it is the committee's view, based on a review of the testimony of most witnesses, that the subject of OCS leasing is too important and the need for change too compelling to rely on piecemeal and tardy decisions of the current or some future administrator of the OCS leasing program in the Department of the Interior. It is essential that Congress set out, in law, public objectives and provide guidance to the Secretary of the Interior, based on the accumulated knowledge gathered since 1954, for implementation of such a vital component of the Nation's total energy program.

During the 94th Congress, the committee heard opposition to the current legislation from two sources, the Department of the Interior and the large petroleum companies. The present law was adequate, they argued, providing sufficient leeway for changes, and that most of the objectives of such legislation could be (or already was) accomplished by administrative action. As described later, the Department of the Interior now recognizes that the 1953 Act is too vague and too broad.

The present law, with its grant of almost total discretion to the Secretary of the Interior, has led to criticism by States, environmentalists, fishermen, tourists, smaller industry representatives, and others. This criticism led to fears and opposition, often expressed in repeated law suits. It is the committee's intent, through new legislation, to alleviate these suspicions and allow prompt, yet conscientious, exploitation.

The petroleum industry itself is aware of these suspicions. The chairman of the board of Humble Oil (Exxon) told a conference on offshore technology in 1969 that the industry's freedom of operations in the future "may well depend on our ability to convince the American public that we are capable of carrying out difficult, sophisticated technical operations deep in the ocean while maintaining the ability to conserve and protect the marine environment."

The committee endorses this sentiment. The motivation behind, and the intent of, H.R. 1614 is to provide the public with this type of assurance, require a more open process in the leasing of the public's OCS lands to industry, and thus help dispel the doubts and suspicions, and avoid undirected and misdirected opposition and, often, legal challenge.

It is the conviction of the committee, after its extensive examination of the OCS issue, that we can and should proceed with early exploration and development in an expanded offshore oil and gas program and that this can be done, provided adequate safeguards are provided in an environmentally and socially responsible manner.

As one witness, James W. Brooks, Commissioner of the Alaska Department of Fish and Game, stated:

> I firmly believe we can have our petroleum and our healthy ecosystems too. But I just as firmly believe that we are a long way from achieving the safeguards we must to insure that the Alaska OCS experience is not a disastrous gamble. Yet, the safeguards are well within our reach if we can but shake off the hoary traditions of antique management decision, if we can but create a biological surveillance system with authority, integrity, and expertise.

This statement is an apt summary of the purposes of this bill.

B. RECENT EVENTS

The first OCS bill was the result of 17 months of diligence and perseverence on the part of the Select Committee. At the time, it was the feeling of the majority of the members of the committee that the 1976 amendments, titled S. 521, dealt thoroughly and realistically with OCS problems. The fact that S. 521 was a balanced bill is documented by the firm support for it by most coastal States, environmental and citizen groups, unions, gas distributors, independent service station operators, small refiners and smaller energy companies. That support has remained steadfast and public demand has continued to lend impetus to the OCS legislation of this Congress.

The OTA report

After adjournment of the 94th Congress, the need for OCS reform was demonstrated by a series of events and reports. In November of 1976, the Office of Technology Assessment issued a report which identified the problems associated with OCS development—problems which this legislation will ameliorate. The recommendations of this OTA Report, "Coastal Effects of Offshore Energy Systems," [34] parallel the provisions in H.R. 1614.[35] The findings, purposes, and policies of the OCS bill reflect the need for detailed planning on the part of the Federal Government and the concerned States to minimize the potential conflicts and adverse impacts of OCS activities as recommended by the OTA report. The bill specifically requires that the Secretary prepare a 5-year leasing program after consulting all interested parties and balancing all impacts.

The fragmentation of the Federal management of the oil and gas program was assailed in the OTA Report. This problem has been satisfied in H.R. 1614 by strengthening the responsibilities of the

[34] U.S. Congress, "Coastal Effects of Offshore Energy Systems", Office of Technology Assessment, OTA–0–37, November 1976, 288 pp.

[35] For a comparison, recommendation by recommendation, see statement of John M. Murphy, in the Congressional Record of Feb. 2, 1977, at E–516.

Interior Department as lead agency, and mandating coordination and the elimination of duplicative requirements.

The OTA report also attacks the "inadequate regulation and enforcement of offshore oil and gas technology," a problem which this bill remedies by requiring a review of safety regulations, and the use of the best available and safest technology. In addition, the Department of Labor and the Coast Guard are both given regulation and enforcement authority.

Answering the OTA critique concerning environmental studies, the bill requires baseline studies for every lease area prior to any lease sale. Studies are ordinarily to be completed before the approval of a development plan, and the responsibility for conducting baseline and monitoring studies is incumbent upon the Secretary of Interior, with direction to utilize the expertise of NOAA.

On the role of the state in the OCS program, the OTA Report stated forcefully:

> The limited role of State governments in the decision-making process for OCS development under existing laws and practices may lead to unnecessary delays and improper planning for such development."

In order to make the OCS program effective and credible, H.R. 1614 provides for the solicitation of comments from the states on the leasing program, lease sales, exploration plans and development plans. The Secretary is to respond to such recommendations in writing, and incorporate them if he determines they are in the national interest, and within the balanced interest of the citizens of such State.

On oil spill liability, compensation, containment, and cleanup, recommended for legislative action by OTA, the bill has a detailed title establishing strict liability for spills; providing for responsibility for spills; establishing procedures for removal; providing compensation for spills by lessees and a fund; and authorizing judicial remedies, including class actions. In addition, the Coast Guard is given authority to enforce preventive measures to counter oil spills, to promptly remove discharges and to report on such activities.

Spills, shortages, and law suits

In the severe winter months of December and January, a series of events demonstrated the need to amend the outmoded OCS Lands Act of 1953—the gas shortages; the freezing weather; well-publicized tanker disasters; reports of withholding of gas; varying estimates of the extent of our oil and gas resources; and the acceleration of proposed lease sales by the outgoing administration.

The hazards of tanker conveyance of oil and gas, and the threat of oil spill pollution, were vividly engraved in the public consciousness in the 4-month period, ending in March of 1977. Some 45 men died and over 22 million gallons of oil spilled in our coastal waters and oceans. On December 15, 1976, on the shoals off Nantucket Island, Massachusetts, the *Argo Merchant* ran aground and split in two, pouring 7.6 million gallons of heavy industrial oil near the North Atlantic coast. Although the U.S. Coast Guard quickly took control of the rescue and cleanup operations, the strong 50-knot winds and 15-foot

waves greatly hindered containment and cleanup activities. Besides underscoring the dangers associated with the lack of safety and sound construction certification for oil tankers, which for the most part fly under "flags of convenience", the disaster generally demonstrated the obvious limitations of present pollution prevention and cleanup technology whether from a tanker, pipeline or even from a rig or platform.

The Coast Guard was barely into its investigation of the *Argo Merchant* incident when the Liberian-registered tanker, *Olympic Games*, plowed aground in the Delaware River, releasing 133,500 gallons of light Arabian crude oil These and other tanker spills illustrate that OCS exploration and development should be safer than relying heavily on tanker transportation of imported oil; which has reached the rough equivalent of 30 *Argo Merchant* shiploads per day For example a study by Science magazine found that, "Tankers are the source of the highest volume of oil spilled each year and platforms have the lowest volume * * * without petroleum production from the Atlantic Outer Continental Shelf imports of crude oil and petroleum products will increase, and the concomitant use of more tankers will increase the number of collisions and accidents along with deliberate spills occurring in the Atlantic Coastal waters."

The winter of 1976–77 was a bitter one for Americans. Shortages of gas led to cold homes and offices, and some cases the closing of businesses and factories, and a resulting loss of jobs. Safe, expeditious development of OCS resources would reduce these problems. Gas distributors testified before our committee that they need the provisions of H.R. 1614, which provides for new bidding systems, for example, royalty bidding, for gas distribution to needy geographic areas, and for return of produced gas to developer's region, to allow them to participate in OCS leasing and thus assure secure sources of gas at home.

The gas shortage led to questions about governmental control over developers and producers. A preliminary investigation of five gas fields off the Louisiana coast discovered "shut-in" reservoirs totaling almost 1 trillion cubic feet of gas and that production from ongoing operations in three fields had been reduced precipitously since 1974.[38] A study based on this investigation questioned the adequacy of government oversight of producer's activities by findings that:

1. Production had fallen sharply in the past 2 years in three of the four fields reviewed.

2. In all four fields, production was substantially below the maximum efficient rate of production (MER's)—maximum production "benchmarks" established initially by the producers.

3. The "benchmark" MER's themselves had been substantially reduced during the past 2 years by the producers."

On February 17, 1977, Judge Jack B. Weinstein invalidated the mid-Atlantic Lease Sale No. 40 (covering the Baltimore Canyon lease area with a potential production of as much as 1.4 billion barrels of oil and 9 trillion plus cubic feet of natural gas) on the grounds that it violated the National Environmental Policy Act of 1969. Although the ruling has now been reversed, it underscores that the present OCS law needs reform to avoid delays, eliminate legal inadequacies and

[38] See "Preliminary Investigation—Production Capability and Production Levels at Selected Natural Gas Production Fields in the Gulf of Mexico Outer Continental Shelf", a report to the Secretary of the Interior, prepared by J. W. Wilson & Associates, Inc., Washington, D.C., February 1977.

lessen the genuine concern by environmentalists, state and local officials and other citizens. The key bases of Judge Weinstein's decision were: (1) The lack of adequate information about the effects of the sale; (2) the lack of adequate consultation with affected governments and persons; (3) the lack of adequate resource data, potential benefits, and potential risks to allow rational and balanced policy judgments; (4) the lack of step-by-step procedures to insure people decision making; (5) the lack of an assured procedure to have a second look at OCS activities often discovered when resource potential is known; and, (6) the lack of procedures for terminating overly risky activities. Of course, all of these defects are cured by H.R. 1614. In fact, the conclusion of the appelate court in reversing Judge Weinstein was that the new Secretary of Interior, adopting the procedures mandated by H.R. 1614, could adequately monitor future activities and their impact. In short, delays caused by the lower court's rescission of Sale No. 40 would have been eliminated if H.R. 1614 had been law.[37]

One event vividly dramatized the risks that accompany offshore oil and gas operations—that is, the North Sea oil platform blowout of late April 1977. During its 2½ years, the committee heard witness after witness from the large oil companies argue against increased safety and environmental protections. "We can do the job," they stressed. "Leave us alone! We have the technology to avoid catastrophes. Look at what we've done in the North Sea," they defended.

Over a 7 day period in April of 1977, over 147,000 barrels of oil were dumped into the Norwegian North Sea, creating an oil slick over as much as 300 square miles. The blowout occurred on the Bravo platform operated by the Phillips Petroleum Co. in the Ekofisk field. Apparently some tools had been dropped into the well hole obstructing the flow, and when the crew was readying the well for re-working, it began to blow. In the confusion of the night, the blowout preventor was installed backwards. The well raged out of control for days until two American troubleshooters, "Boots" Hanson and Paul "Red" Adair, were finally successful in subduing it.

Just 3 weeks before the incident Mr. Adair had been quoted by the British media as warning that a "fearsome accident" in the North Sea was inevitable, and that when it came the safety equipment available for the North Sea rigs would be inadequate to contain it. Testifying later before the House Ad Hoc Select Committee on the OCS on the catastrophe, Mr. Adair indicated that what was needed was a well-equipped semi-submersible, like the "Big Red One", which has a fire pump that spurts out better than 30,000 gallons a minute, a machine shop, a hospital and other equipment to combat disaster situations involving drilling platforms. Mr. Adair's semi-submersible rescue vehicle would cost about $50 million and would be able to fight blowouts and fires for long periods of time in rough seas. Apparently, foreign countries are way ahead of the United States in ordering this type of equipment.

The North Sea blowout resulted in the loss of as much as 8.2 million gallons of oil worth over $2 million, and forced the shutdown

[37] The situation was summed up by Chairman Murphy in a February 17 statement on the decision: "Last August, I warned the Interior Department about the deficiencies in the procedures surrounding the sale. They did not listen. I asked for support for OCS reform. They actively opposed. I urged more complete information as to OCS activities and impacts. They withheld. Today's decision demonstrates that their failure to listen to me, to the OSC Committee, and the Congress, necessarily resulted in more delays in our efforts to safely and expeditiously develop our offshore oil and gas resources." It should be noted that the *new* Secretary of Interior *is* listening.

of production operations in the entire area. The cost alone for "Red" Adair and company to squelch the blowout was reported at $6.6 million. In addition, the cost in damages to the platform and equipment, and cleanup expenses were substantial. The real extent of environmental damages and harm to fishery resources, if any, is unknown. The blowout conclusively demonstrated the very real environmental threat posed by offshore drilling, the inadequacy of offshore pollution cleanup technology, and the inadequacy of onsite safety equipment and regulation. "In short", Chairman Murphy summarized at a select committee hearing, "the (Norwegian) Government may not have adequately regulated (the offshore operations). The companies were trusted, and the myth of technological competence had to be dissipated by a disaster". He emphasized, "While no one can honestly say that we can prevent spills, we can, and must, insure that all precautions are taken and that OCS development will not give up safety for speed". Hence, the North Sea blowout and others like it justify the use of the "best available technology" standards where economically achievable as required by H.R. 1614.

The GAO studies

In March of 1977, the General Accounting Office, the investigative arm of Congress, reported on Lease Sale No. 35 (Southern California) concerning problems in selecting and evaluating land to lease. On March 7, Monte Canfield of GAO briefed the committee on the report. The report explicitly states and recommends the following:

> Bills (S. 9 and H.R. 1614) identical to S. 521 have been introduced into the 95th Congress.
>
> The recommendation in this report is in line with the thrust of provisions in the proposed legislation to provide for an Outer Continental Shelf leasing program that will identify size, timing and location of leasing to meet national goals and to assure receipt of a fair market value for the oil and gas owned by the Federal Government. GAO recommends the Congress favorably consider this legislation.

In its evaluation of the Southern California Lease Sale No. 35, the GAO questioned the adequacy of the Interior Department's tract selection, resource evaluation and revenue estimates. The sale was held on December 11, 1975 and 231 oil and gas tracts (approximately 1.3 million acres) were offered. The GAO found that because the prelease tract selections and evaluations were based on minimal and insufficient resource information, that the estimates of tract values were unreliable, hence the return to the public based upon the fair market value could not reasonably be assured. A full 84 percent of the tracts offered either showed no resource value, or insufficient resources to sustain profitable operations, some due to the limits of present technology. Potential revenues initially put at $2.3 billion were overestimated fivefold with the final results showing that only 24 percent of the tracts were leased, producing $417 million for the Treasury. The GAO also assailed the competitive aspects of the lease sale pointing out that of 231 tracts only 70 received bids, and the majority of tracts bid on, that is 70 percent, secured only one or two offers.

Consequently the GAO recommended:

> The Secretary of the Interior should direct a geological exploration which would implement a systematic plan for appraising Outer Continental Shelf oil and gas resources, including selected stratigraphic test drilling.

In summary, the GAO reiterated:

> The Department's policy of leasing the maximum resource in minimum time could adversely affect our domestic energy production. This policy encourages speculation in the Outer Continental Shelf lands and can tie up industry capital in lands with no or minimal resources and infringe on the public's right to receive fair market value for the resources.[38]

The above statements and recommendations were re-stated in a June 1977 GAO report on "Outer Continental Shelf Sale No. 40—Inadequate Data Used to Select and Evaluate Lands to Lease," [39] requested by the Ranking Minority Member of the OCS Committee. Held on August 17, 1976, the Baltimore Canyon Sale offered 154 oil and gas leases off the coast of Delaware, Maryland, and New Jersey. The yield to the Government in bonus bids was $1.1 billion in addition to probable royalty revenues down the road. Again the GAO attacked the reliability of DOI's resource assessment program, and pointed out that high bonus bidding was no indication of ultimate resource potential. For example, Sale No. 23 in 1953 brought $1.5 billion in bonus bids, but no exploitable resources have been found. GAO urged that Interior direct a geological exploration program and institute a systematic plan for OCS resource appraisal. As before, GAO recommended:

> After Interior knows what land industry has explored and how thoroughly it was explored, if any data is still needed, the Department of the Interior should take necessary actions, including public financing of stratigraphic drilling, to obtain it.

The Select Committee considered the criticisms and recommendations of the GAO. As suggested, the passage of H.R. 1614 will ameliorate many problem areas identified by various GAO reports and testimony before the Committee.

Numerous other studies have contributed to the literature calling for long-awaited changes in the present system of OCS leasing and management. For instance, a study was undertaken by the California Coastal Commission on OCS policies, problems and practices. The Committee makes note that nearly all of the recommendations of that study have been included in H.R. 1614.

The Carter administration

There is a new approach, cooperation and support, by the executive branch as to OCS reform.

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[38] "Outer Continental Shelf Sale No. 35—Problems Selecting and Evaluating Land to Lease," General Accounting Office, No. EMD–77–19, March 7, 1977, pp. i–vi.

[39] "Outer Continental Shelf Sale No. 40—Inadequate Data Used to Select and Evaluate Lands to Lease," General Accounting Office, No. EMD–77–51, June 29, 1977, pp. i–iv.

During the Presidential campaign, during the transition period, and during the early months of his administration, President Carter repeatedly called for the reform of our OCS leasing practices, and emphasized the need for balanced resource development and the implementation of sound environmental safeguards. In carrying out the President's program, a new Secretary of the Interior, Cecil D. Andrus has reconfirmed the administration's position at his confirmation hearing and in every public statement and decision since then.

The new Secretary of the Interior has indicated his concern for a balanced approach to OCS decisionmaking.

Secretary Andrus made his imprint on Interior's OCS leasing program early. In the crisis atmosphere of the past winter's gas shortage, he issued an urgent request on January 24, 1977, to more than 50 operators on the Gulf of Mexico OCS to increase the production of natural gas as rapidly as sound safety and environmental practices would permit. Shortly thereafter, he announced the cancellation, at least temporarily of the Alaskan Cook Inlet sale, which had been slated for late February, in order to personally make a thorough review of the studies, comments and options available concerning the proposed sale. Upon reports of possible improper "shut-ins", he immediately directed that a comprehensive review of gas production in the Gulf of Mexico be undertaken to ferret out any possible hoarding of the resource for speculative purposes and to insure that the maximum flow of gas is supplied that is congruent with good safety and conservation practices.

Secretary Andrus has identified OCS reform as one of his first two legislative priorities in Congress. The Secretary has decided to momentarily slow down lease sales to re-evaluate present Interior Department OCS procedures; to put into effect a more deliberate and realistic program; and to allow Congress to act on pressing OCS reforms. He has urged legislation to give affected States a greater voice in OCS decision-making, which is a key feature of H.R. 1614. On this matter, Secretary Andrus stated simply, "* * * we have to recognize that the states bordering the Outer Continental Shelf where the oil may or may not be found should be given input into the process in order to protect against the social and economic impacts on those States." He continued, "I think the Outer Continental Shelf lands can be utilized with * * * adequate protection and give us less exposure than some of our present tankers." He has pushed for the dissemination of more data and information to the states on OCS activities, which H.R. 1614 would provide.

The Secretary has worked to enhance competition in the auctioning of leases on the OCS, provided for in H.R. 1614 through the required use of new bidding systems, competitive impact reviews and reporting requirements. Pressing for adequate procedures to incur the proper and timely development of lease tracts—a concept embodied in the "due diligence" provisions of H.R. 1614—he has stated emphatically, "Resources simply cannot be held for speculation. We must be sure when leases are given out, that exploration and development occur promptly."[40] Additionally, he commissioned a study of

[40] See op. cit., Interior Nomination Hearings, Jan. 17-18, 1977, pp. 1-82.

shut-in wells, included in the OCS bill. Finally, he has taken note of the difficulties and delay associated with our present system in relation to court challenges of OCS decisions—a malady which is cured by the citizen suit and expedited judicial review provisions of H.R. 1614.

Most recently, on May 17, Secretary Andrus also announced a revised leasing schedule for lease sales through the end of 1978 (figure 7, p. 94). This schedule continues leasing in known areas while opening up exploration and development in frontier areas in a manner that emphasizes cooperation with coastal State and communities to identify and resolve conflicts. That schedule is a close parallel to the leasing program standards in H.R. 1614.

Realizing that OCS reforms are required in legislation, and thus not just dependent on who is elected or appointed, Secretary Andrus and the Carter administration have explicitly stated the need for, and their support of, the reforms in H.R. 1614. In testimony before the Committee, Secretary Andrus stated, "I believe that amendment of the OCS Lands Act is overdue and would like the Department of the Interior to work closely with this committee toward enactment of amendments this session." The following excerpts from the Interior Department's testimony will serve to summarize its backing of H.R. 1614:

The Department supports the concepts in H.R. 1614 designed to achieve the objective of assuring State and local communities an effective role in OCS decisions. These include an information program * * * (and) opportunities for the Governors to make recommendations to the Department.

We also support the efforts in H.R. 1614 to improve the balancing of environmental protection with the achievement of the benefits of domestic energy production. In particular, the Department supports—

continuation of the authority for gathering data on environmental conditions and changes that might result from OCS activities;

specific consideration of potential environmental damages in the development of the leasing program, the sale of leases on specific tracts, and the approval of OCS activities;

an orderly and coordinated review of environmental, safety and health regulations to assure that they are clear and effective.

In addition, the Department supports legislation on oil spill liability, preferably in a comprehensive bill rather than in the OCS amendments.

We support legislation that would—

authorize pre-lease exploration when deemed necessary;

provide for approval, modification or disapproval of exploration development and production plans;

provide for suspension or cancellation of leases when it is clear that the environmental risks or damages of continued operations will place inequitable burdens upon those who use the marine or coastal environments that are not outweighed by the national benefits of producing the oil and gas.

We support the mandate to use alternative bidding systems, although these alternatives need not be limited to eight.

Additional testimony from John O'Leary, Administrator of the Federal Energy Administration, called for the early enactment of H.R. 1614 to increase the input of the States, provide adequate environmental and other safeguards, to minimize time-consuming litigation and to achieve orderly OCS development. In particular, Mr. O'Leary pointed out that the responsibility for the baseline study program should remain in the Interior Department. He emphasized that, "FEA strongly favors the vesting of authority in the Department of the Interior to cancel leases when the continued activity would cause serious harm or damage to the human or marine environment." It might be added that the cancellation provisions of the bill also enjoy widespread support among environmental groups.

Charles Warren, Chairman of the Council on Environmental Quality in his March testimony before the committee, stated in no uncertain terms:

> The bill before you today would make major changes in the law and the management system which have evolved over 20 years. We believe the changes are needed. In April, 1974, CEQ concluded a year-long environmental assessment of OCS oil and gas development and submitted its report to the President. We concluded that leasing in frontier areas must be conducted under carefully controlled conditions. H.R. 1614 would allow full implementation of the recommendations of the CEQ study.
>
> The bill specifically addresses clear limitations in the present law. It assures better management of OCS resources by providing:
>
> Authority for a distinct pause between exploration and development to reevaluate how and whether to proceed with development.
>
> Recognition that leases should not irrevocably alienate publicly-owned resources, and authority to cancel leases and compensate in extreme situations.
>
> Clear authority to require data submission by the lessee, with specific provision for making certain data public.
>
> Authority for a full range of alternative bidding systems to maximize competition and revenues.
>
> Larger lease sizes and longer lease terms than allowed under current law, which are desirable in some frontier areas.
>
> Clarification of specific regulatory authorities, particularly the ability to require best available technology economically achievable to protect health, safety and the environment.
>
> Definition of the role and authority of states in OCS decisionmaking.

The President himself has publicly committed himself to OCS reforms such as those in H.R. 1614. His comprehensive energy package singled out the OCS as an important, near-term source of oil and gas, but expressed caution that environmental safeguards be vigorously maintained. The committee's bill received explicit support as follows:

> Oil and gas under Federal ownership on the Outer Continental Shelf (OCS) are important national assets. It is es-

sential that they be developed in an orderly manner, consistent with national energy and environmental policies. The Congress is now considering amendments to the OCS Lands Act, which would provide additional authorities to ensure that OCS development proceeds with full consideration of environmental effects and in consultation with States and communities. These amendments would require a flexible leasing program, using bidding systems that will enhance competition, ensure a fair return to the public, and promote full resource recovery. The Administration strongly supports passage of this legislation.

The President has also directed the Secretary of the Interior to undertake a review of OCS leasing procedures. This review will establish a sound basis for the leasing program and assure adequate production from the OCS, consistent with sound environmental safeguards.

Less than a month later, President Carter again underscored the urgency of OCS reform in his environmental message. It is important to quote the entire portion of that message to Congress relating to the Outer Continental Shelf:

The oil and gas under Federal ownership on the outer continental shelf must be developed in an orderly manner, reconciling the Nation's energy needs with the fullest possible protection of the environment.

Amendments to the OCS Lands Act now being considered by the Congress, with provisions proposed by the Administration, will provide important new authority to the Secretary of the Interior. I urge expeditious passage of legislation to regulate the outer continental shelf, and in particular I favor provisions which would:

Permit full evaluation of the effects of oil production, and cancel leases or terminate operations when harm or damage to the environment outweighs the advantage of continued operations;

Improve consultation with states and communities to assure that they have a real role in decisions which affect them;

Require industry to use the best available economically achievable safety and pollution control technology in operations on the outer continental shelf.

In addition to new legislation, certain administrative steps should be taken in this area. The first is to assess the size and scheduling of the OCS program. The Secretary of the Interior has already revised this program through 1978 to reflect reasonable production objectives as well as the various environmental considerations in each OCS region.

As the Secretary now proceeds to reevaluate the longer-term OCS program, I have directed him to work closely with the Governors of affected coastal states to guarantee that proposals for the timing and sequence of offshore lease sales are reasonable, not only in a technological sense but also in economic, social, and environmental respects. Because the Alaskan outer continental shelf is particularly sensitive and

controversial, I am directing him to give special emphasis to it. I have also asked him to work closely with the Secretary of Commerce as she identifies potential marine sanctuaries in areas where leasing appears imminent.

To obtain fuller knowledge about the environmental impact of leasing and production, and to increase participation by the states in the process of decision, I have further directed the Secretary of the Interior to:

Establish an OCS Information Clearinghouse to receive inquiries about federal OCS activity;

Develop regulations, operating orders, and lease provisions specifying the information required from industry about both the offshore and onshore impacts of prospective development;

Facilitate cooperative planning among industry, the Interior Department, and Department of Transportation, and the states for lease development, pipeline locations, pipeline standards, and onshore facilities;

Establish procedure for compliance with the National Environmental Policy Act in connection with development plan approvals.

Because OCS activities should be administered in the most orderly way possible, I am directing the Secretary of the Interior to study carefully the prospect of reorganizing his Department's management of these valuable resources.

He and the Administrator of the Environmental Protection Agency should also coordinate their respective regulatory activities to ensure that exploration and development are not delayed by procedural confusion.

The committee is appreciative of the backing provided by the administration. We have worked hand-in-hand with the executive branch, principally the Department of the Interior, and interested parties on all sides of the issues to work out language on controversial provisions to bring before the full House a balanced, workable bill worthy of enactment. With our annual bill for oil imports at a level of as much as $45 billion and rising, time is of the essence. In view of the urgent need to increase oil and gas production to heat our homes, to keep our economy functioning soundly, and to preserve the very security of the Nation, your committee entreats the House to take favorable and expeditious action on H.R. 1614.

C. NEED FOR THE SPECIFIC REFORMS OF H.R. 1614

Testimony demonstrated support not only generally for H.R. 1614 but also specifically for the major provisions of H.R. 1614, including: Revisions of bidding and lease administration, requirements for exploration and development plans, lease suspension and cancellation, on-structure drilling, development plans, development of a five year leasing program, coordination and consultation with affected states, baseline and monitoring studies, safety regulations, OCS information program, offshore oil spill pollution funds and direct grants to the states.

1. Revisions of bidding and lease administration—

Stuart C. Mut of the Atlantic Richfield Co. indicated that his company had no objection to granting the Secretary of Interior the authority and the flexibility to use alternative bidding systems at his discretion.

E. H. Clark, Jr., president and chief executive officer of Baker International Corp., strongly favored work commitment bidding rather than bonus bidding.

Roger Hedgecock of San Diego County, Calif., testified that the separation between exploration and production leasing would result in better resource development decisionmaking.

Darius W. Gaskins, Jr., Director, Bureau of Economics, FTC testified that Interior should have the flexibility to experiment with different leasing systems, although not specifically mentioned in the legislation, such as the so-called "dual leasing system".

The Federal Trade Commission in testimony from Walter T. Winslow, Bureau of Competition, supported Section 205 of H.R. 1614, "Bidding Systems" but suggested that the Secretary be free to experiment with variations of all bidding systems; for example, the two-stage bidding system whereby exploration rights would be leased separately from development and production rights.

The American Gas Association supported, at the earliest practicable time, exploration to determine the extent of our natural resources, and alternative bidding systems amended to mandate the percentage under the non-cash system at 50 percent.

Richard H. Bowerman, chairman of the board, Southern Connecticut Gas Co., on behalf of the Associated Gas Distributors opposed the cash bonus bidding system, and suggested that a mandate should be incorporated into H.R. 1614, to reduce the use of this system to a maximum of 50 percent. In addition, he stated that alternative bidding methods should not be limited to the eight systems specified in the bill.

The Environmental Policy Center favored the limiting of the use of the bonus bidding system to not more than 50 percent of the acreage leased.

The Governor of New Jersey, Brendon T. Byrne, urged the use of alternative leasing systems, eliminating front-end, cash bonus bids, to increase competition.

James F. Flug of the Energy Action Committee called for substantial reduction on the use of cash bidding to no more than 10 percent of the acreage in any given lease sale, except where there is a clear showing of need for its use. The Secretary's authority to waive the bidding restrictions in the bill for the first year should be removed.

2. Requirements for exploration and development plans—

Evelyn F. Murphy, Secretary of Environmental Affairs, Massachusetts, stated that some form of separation of exploration from development is crucial to any rational OCS planning process. This is also why the dual environmental impact statement approach is so important, she said.

The EPA also expressed strong support for the dual environmental impact statement system provided for in H.R. 1614.

John Klein, county executive, Suffolk County, N.Y., felt that exploration and development of the OCS should be explicitly separated.

He added that information pertaining to OCS exploration and development should be disclosed to the public.

Some witnesses suggested that the requirements for exploration and development plans were duplicative of existing regulations; H.R. 1614 would instead codify these procedures.

The Sierra Club urged that, scientific studies, including predictive studies, with adequate time-tables and funding, should be completed prior to leasing, or at least before production and development plans are approved.

In 1975, the National Advisory Committee on Oceans and Atmosphere recommended that a less detailed environmental impact statement should be accepted for exploration plans, but that a more thorough environmental impact statement should be prepared for approval production plans.

3. Lease suspension and cancellation—

FEA strongly favored the vesting of authority in the Department of the Interior to cancel leases when the continued activity would cause serious harm or damage to the human or marine environment.

Environmental Protection Agency favored the bill's cancellation provisions with the addition of the amendments offered by Interior so that the advantages of continued activity will be considered against the detriment that may be caused to the environment.

The testimony of Mills E. Godwin, Jr., Governor of the Commonwealth of Virginia endorsed the cancellation provisions of H.R. 1614.

The representative from the State of Massachusetts strongly supported the bill's cancellation provisions, and recommended the acceptance of Interior's amendments in this regard.

The statement of Governor Byrne of New Jersey also backed the cancellation provisions in H.R. 1614 with the caveat that lessees should only be compensated for actual expenses.

The Sierra Club was of the opinion that the Secretary of the Interior should have the option to cancel a lease without compensation, and that suspension time before cancellation should be limited to a total of 5 years.

4. Development of a 5-year leasing program—

Roger Hedgecock, representing the County of San Diego, Calif., and the National Association of Counties, favored the 5-year leasing program. He indicated that the 5-year leasing program should be expanded to consider regional as well as national considerations. State and local governments should be involved in prioritizing leasing areas for each OCS region and in analyzing alternatives to leasing such as utilization of other energy sources which could effectively displace the intended use of the OCS resource.

The GAO recommended that the Department of the Interior should develop a long range plan for the rational, systematic appraisal of the oil and gas resources on the OCS.

The testimony of Governor Godwin of Virginia urged that every effort be made to help states plan in advance for OCS related activities, and commended the proposed 5-year leasing plan provided for in H.R. 1614, provided that it be carefully meshed into ongoing operations so as not to create delay.

The representative from the State of Massachusetts stated that H.R. 1614, will facilitate the orderly exploration and development of our OCS resources, setting out goals and objectives for a long-term leasing program. Such a leasing schedule should place priority on

developing those areas with the highest resource potential and the least environmental risk.

5. On-structure drilling—

Monte Canfield, Jr., of the GAO recommended that the Secretary of the Interior should conduct a geological exploration program to collect data that would protect the public interest. Also, through the issuance of permits, private industry should be encouraged to conduct drilling, sharing the prelease information with other participants on a cost-shared basis, and with DOI. He added that the Interior Department should conduct additional stratigraphic drilling at public expense, if any data gap exists after industry participation is known.

6. Coordination and consultation with affected States—

Secretary Cecil Andrus went on the record in support of the concept that State and local participation in OCS decisions should be assured and that environmental protection should be balanced with the benefits of OCS production.

EPA testified in favor of the sections of H.R. 1614, providing for Federal coordination and cooperation with State and local governments. Full support was expressed for the proposed administration amendment to section 19 which would require the Secretary of the Interior to balance the national interest and the well-being of the citizens of the affected States in considering the recommendations and input of the States.

The main concern voiced by the State of Massachusetts was that the States be properly consulted and involved in the OCS decisionmaking process in order to alleviate coastal and environmental impacts.

Representatives of the National Association of Counties and the County of San Diego, Calif., testified that an increased State and local voice in OCS decisionmaking was needed, which in turn requires a need to provide State and local governments access to complete information on resource potential, estimated onshore facilities, environmental risks, and so on.

John Klein of Suffolk County, N.Y., declared that the localities should be involved in OCS decisionmaking early in the process, at the same time the governors are brought in, and not when the decision to develop has already been made. This must include advanced planning and impact funds.

The testimony of both the Commonwealth of Virginia and the State of New Jersey commended the provisions of H.R. 1614 which call for enhanced consultation with the States.

The representative of the State of New York termed it essential that the States be included in the leasing program at both the technical and policy level.

Environmental groups also supported the enhanced involvement of the States.

Governor du Pont supported new sections 18 and 26 which provide for information sharing and direct input from the States.

7. Baseline and monitoring studies—

Andrew W. Breidenbach expressed particular approval of section 20 concerning baseline and monitoring studies which requires development of information aimed at predicting the impacts on marine biota.

The National Oceans and Atmosphere Administration supported the proposed administration amendment to section 20 of H.R. 1614 authorizing the Secretary of the Interior to conduct environmental baseline and monitoring studies, and directing him to use the capabilities of the Department of Commerce to the maximum extent practicable.

FEA questioned the advisability of removing responsibility for the baseline program from the Department of the Interior, as was originally provided for in H.R. 1614.

Evelyn F. Murphy, representing Massachusetts, recommended, on the subject of baseline and monitoring studies, that the Department of the Interior remain the lead agency, but that to the "greatest extent practicable," it contract with NOAA to carry out the studies because of that agencies good track record.

New Jersey suggested that the Department of Commerce be the lead agency for environmental baseline studies, but will accept a compromise including a Memorandum of Understanding between Interior and Commerce.

8. Safety regulations and enforcement—

Eula Bingham of the Department of Labor, testified that the safety and health provisions of H.R. 1614, as originally introduced (new sections 21 and 22), present difficulties for DOL.

Patrick J. Campbell of the United Brotherhood of Carpenters and Joiners of America urged that both OSHA and the Coast Guard should enforce health and safety on the OCS on a joint, cooperative basis.

The Association of Diving Contractors felt that OCS health and safety jurisdiction should be vested in the Coast Guard.

A professional diver, Michael C. Bateman-Cooke, testified that although OSHA may now have the knowledge to at least promulgate regulations, the Coast Guard is suited to enforce diving regulations, and should be used.

The representative of the National Association of Counties and San Diego County, Calif., supported the requirements for the use of the best available technology.

9. Oil spill pollution fund—

The administration expressed preference for the Comprehensive Oil Spill and Compensation bill reported by the House Committee on Merchant Marine and Fisheries in lieu of the liability title of H.R. 1614.

Environmental groups, state and local officials, and Administration witnesses supported the concept of the oil spill pollution fund.

10. OCS information program—

John O'Leary of FEA stated that controversy over the reliability of our information about the nation's oil and gas resources, and the Government's ability to develop independent information regarding those resources may require access to or the obtaining of data beyond those which have been utilized in the past.

The GAO heavily emphasized the need for the Interior Department (with industry cooperation and on its own) to develop greater and more accurate information concerning our offshore oil and gas resources prior to lease sales.

James F. Flug of Energy Action indicated that full information on costs and returns on every lease should be required both retroactively and hence forward by H.R. 1614.

Governor Byrne of New Jersey and others endorsed exploration and the probability of expanding it to increase our information on OCS resources.

11. Direct grants to the States—

In 1975, the National Advisory Committee on Oceans and Atmosphere recommended that impacted States be compensated for their coastal losses.

Governor Godwin's testimony called for "front-end" and impact funds for the States from the Federal Government in addition to those provided now under the Coastal Zone Management program.

Peter A. A. Berle, Commissioner of the State of New York, Department of Environmental Conservation indicated that some Federal funding assistance will be required to make Federal/State cooperation and consultation effective. He recommended an amendment to the bill authorizing additional monies to be distributed to the coastal states for the policy, managerial, and operational aspects of the Federal leasing program. In addition, he supported the concept of increased sharing of Federal funds to ameliorate the impacts of development.

William J. Guste, Jr., Attorney General, Louisiana, testified that significant incentive for exploration and production would be provided by allowing the coastal and Great Lakes States to participate in revenues from offshore production in the same way that the interior states have benefited under the Mineral Leasing Act.

VI. Section-by-Section Analysis

SHORT TITLE

This Act may be cited as the "Outer Continental Shelf Lands Act Amendments of 1977".

TITLE I—FINDINGS AND PURPOSES

Title I details the findings of Congress that led to enactment of the Outer Continental Shelf Lands Acts Amendments of 1977 ("1977 Amendments") and the purposes of Congress in enacting the 1977 legislation.

Section 101.—Findings

As a result of its extensive hearings, both in the 94th Congress and the 95th Congress, the committee set out in section 101, a number of findings about the current and future supply of energy, the potential of resources of the Outer Continental Shelf ("OCS"), and the existence and solution of administrative, legal and environmental problems. Specifically, the findings are that the demand for energy in the United States is increasing and will continue to increase, while the domestic production of oil and gas has declined. This decline in production has made the United States increasingly dependent on imports to meet domestic demand, but this dependence on imported oil

can be significantly reduced by increasing the development of domestic sources of energy. Similarly, natural gas consumption of the United States has greatly exceeded any increase in domestic reserves.

There is technology available to significantly increase domestic production of oil and gas in an environmentally safe manner. One source for increased domestic discovery and production of oil and gas is the Outer Continental Shelf (OCS).

The OCS lands and the resources of those lands are public property, which the Federal Government holds in behalf of the people of the United States. Therefore, the Government has a duty to properly and carefully manage this vital natural resource reserve, so as to obtain fair value for the resources, protect competition, preserve the environment, and generally reflect the public interest.

Development of the resources of the Outer Continental Shelf has, however, been delayed because of a number of technological, economic, environmental, administrative and legal problems. To resolve these problems, a review of environmental and safety regulations relating to activities on the Shelf must be undertaken in light of current technology and information. In addition, because of the development and delivery of OCS resources and the placement of related energy facilities may cause adverse impacts on certain States, and local areas within those States, these States and affected local areas must be able to develop policies, plans and programs to anticipate and ameliorate any adverse impacts. Thus, they must be provided with timely access to information as to OCS activities, and an opportunity to review and comment on policy decisions.

The Federal Government must also assume the responsibility for minimizing or eliminating conflicts between oil and gas development on the shelf and other uses of the marine environment, such as fish and shellfish harvesting and recreational activities.

Finally, the problem of the effects of oil spills must be dealt with. Funds must be made available to pay for the prompt removal of any oil spill or discharge and for any damages suffered by any private or public entity as a result of the spill or discharge.

Section 102.—Purposes

The Outer Continental Shelf Lands Act of 1953 has given broad discretion to the Federal Government in exercising regulatory authority as to activities on the Outer Continental Shelf. The findings of Congress and the problems described in those findings, indicate a need to formalize some of these regulations in statutory provisions and to authorize and mandate the promulgation of different and additional regulations. The purpose of the Outer Continental Shelf Lands Act Amendments of 1977 is to establish such a legislative framework. Specifically, the 1977 Amendments are to establish policies and procedures for managing Outer Continental Shelf oil and natural gas resources so as to better achieve national economic and energy policy goals. Oil and natural gas resources in the Outer Continental Shelf are to be preserved, protected and developed so as to: (1) Allow the resources to become available for domestic use as rapidly as possible; (2) provide for a balance of development with protection of the environment; (3) insure the public a fair and equitable return on the resources; and (4) preserve and maintain competition.

Through new safety regulatory and enforcement procedures, the development of new and improved technology is to be encouraged so as not merely to reduce, but rather to minimize, and possibly eliminate, risks to the environment.

States and local areas within States, which are impacted by OCS exploration and development are to be provided with comprehensive assistance to anticipate, plan for, and ameliorate any temporary or permanent adverse impacts, thus insuring adequate protection for the quality of life in affected areas. Such assistance must include timely access to information, an opportunity to participate in the formulation of policy and planning decisions, and an opportunity to actually review and comment on final decisions.

The 1977 amendments are also intended to establish procedures to minimize, and hopefully eliminate, conflicts which may occur between those seeking to explore, develop and produce oil and natural gas and those seeking to recover other natural resources, such as fish and shellfish.

To protect public and private interests from the effects of a possible oil spill, the 1977 amendments establish an oil spill liability fund to pay for the prompt removal of oil spilled or discharged, and for any resultant damages.

Finally, in establishing a leasing program for the future, in specifically selecting sites for leasing, and in authorizing any public or private exploration, the Federal Government must insure prompt assessment of the total amount of oil and natural gas to be found on the Shelf.

TITLE II—AMENDMENTS TO THE OUTER CONTINENTAL SHELF LANDS ACT

This title contains a series of amendments to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331–43) ("OCS ACT").

Section 201.—Definitions

This section amends section 2 of the OCS Act by modifying one term and adding definitions for thirteen new terms.

New definition of "Lease"

Subsection (a) changes the term "mineral lease," in the OCS Act of 1953, to "lease" so as to more properly describe the authorization for exploitation of oil and gas or other mineral resources.

"Lease" has been defined to make it explicit that the Secretary of the Interior has the power to lease geothermal resources on the OCS.

In addition, subsection (a) defines lease so as to not only allow leases for exploration, development, and production, but also to allow a leasing system involving separate leases for exploration and then for subsequent development and production. When read in conjunction with section 8(b)(4), as amended by the 1977 Act, such a leasing system could be a "dual leasing system", in which a lease for exploration would not include any right to subsequently develop and produce the resources discovered, or a two-tiered leasing system in which a lease could be awarded for exploration and include a right to subsequently develop and produce the resources on a portion of the lease area.

In recommending the "dual leasing option",[41] the Secretary of the Interior described the procedure as follows: The Government would offer exploration leases to private firms who would manage and conduct exploratory drilling. Such leases would be awarded by competitive bidding under regulations promulgated in advance as required by Section 8(a) of the OCS Act. The bidders for these leases would bid to become partners with the government, with the government paying a share of the costs of exploration, and the bidder assuming the rest of the costs in return for a percentage of the bonus or other Government revenues received from the sale of subsequent leases which would allow the continued exploration, development and production. The "bid-factors" could be the percentage of the costs to be assumed by the bidder or the percentage of the revenues to be received later by the bidder, or both. The terms of the sharing of exploration costs and revenues from subsequent bids and the conditions governing the decision to sell development leases would, of course, be spelled out in the exploratory lease.

Under this leasing system, the information collected would be made available to all potential bidders and to the public. The Secretary of the Interior has stated that use of such information may have three main benefits. First, use of such system would provide a way of acquiring exploratory data for planning purposes, environmental decisions, and coastal State review, without an extensive Government managed exploratory drilling program and therefore, at lower cost to the Government. Second, use of such system could provide a more rational bidding system. If information is collected with proper consideration for payoff, the availability of such information should reduce future bids on poor prospects and increase them on good prospects. Finally, use of the system could encourage greater competition for development and production of leases because smaller firms who might not otherwise bid because of the great risks, will know more about the prospects available.

The second alternative leasing system possible under this new definition of "leases" is a two-tiered lease, where a lease would be awarded on the basis of competitive bids and would grant the right to fully explore a lease area and then develop a portion of a lease area. As presently utilized in Australia under the Petroleum (Submerged Lands) Act of 1967, and in Canada under the Canadian Oil and Gas Regulations, off-shore areas are exploited in two steps.[42]

An exploratory permit is awarded that grants the holder the right to comprehensive exploration within the permit area. After exploration, the permit holder selects a portion (usually one-half) of the permit area to which he is entitled to obtain a lease or license for development and production. The remainder is returned to the Government which can then award a separate lease or license, for development and production for that area.

As these two new leasing procedures were untested in the United States, the committee strongly believed that Congress should have

[41] This dual leasing system was first considered in the early 1970's by the Nixon and Ford Administrations as a special program for frontier areas. See "J. Whitaker, Striking a Balance—Environmental and Natural Resources Policy in the Nixon-Ford Years (1976)."

[42] For a more detailed description of these systems, see "M. Crommelin, Off-shore Oil and Gas Rights: A Comparative Study in Natural Resources" 14 Natl Res. J. 457, 471-88 (1974).

an opportunity to take a look at any proposed leasing system that separated exploration rights from any or all development rights.

First, the committee expects, and the Secretary of the Interior has agreed,[43] that use of this new authority would be included in a future appropriation request, subject to scrutiny by the Budget and Appropriation Committees and then both Houses of Congress. Second, by an amendment to section 8(b)(4) of the OCS Act, the committee made it explicit that any proposal to offer a lease just for exploration, or just for development and production or for exploration and partial development and production must be submitted to Congress which would have thirty (30) days to review the proposal. Congress, by a joint resolution of disapproval, could then prohibit issuance of such a lease.

Additional definitions

Subsection (b) adds new terms, including "coastal zone", derived from the Coastal Zone Management Act of 1972 as amended. (16 U.S.C. 1451 et seq.)

The subsection also defines "affected State." Throughout the Outer Continental Shelf Lands Act Amendments of 1977, States that are affected by any particular activity are given the opportunity to review, comment on, participate in, and make recommendations as to decisions relating to that activity. To determine those States the term "affected State", has been defined. The term is not a general designation for all actions and decisions. Rather, it is a specific description related to a particular provision, plan, lease, or other activity. With respect to any activity, an affected State is: (1) One whose civil and criminal laws pursuant to section 4(a)(2) of the OCS Act, are applicable to the area where the activity is conducted; (2) which is connected to an OCS structure; (3) which is designated by the Secretary of the Interior as being substantially impacted because it receives OCS oil and gas for processing, refining or transshipment; (4) which is designated by the Secretary of the Interior as having a substantial probability of being significantly impacted, damaged or changed; or (5) which is found by the Secretary of the Interior to bear a substantial risk of serious damage from an oil spill or blowout.

Specific definitions have been added for "marine environment" for conditions affecting the marine ecosystem; for "coastal environment" for conditions affecting the coastal zone ecosystem; and for "human environment" for conditions determining the quality of life of those areas affected directly or indirectly by OCS-related activities.

"Governor" is defined to include any person or entity designated by or pursuant to State law to exercise the powers granted to a Governor in either the 1953 OCS Act or in the 1977 Act.

Definitions have been included for "exploration" to include geophysical surveys and drilling, including drilling of delineation wells after a discovery; for "development" to include geophysical activity, drilling, platform construction, pipeline routing, and the operation of on-shore support facilities, after discovery of minerals; and for "pro-

[43] In a letter to the Senate Committee on Energy and Natural Resources, dated July 8, 1977, the Secretary of the Interior stated that "use of this authority (for dual or two-tiered leasing) would require an appropriation, giving Congress an opportunity to judge the merits of any such system."

duction" to include removal of resources, transfer to shore, and work-over drilling.

Although the committee sought to define these terms to cover mutually exclusive sets of activities, the committee recognizes that often they involve continuous and overlapping processes. The purpose of these definitions is to identify the point, after exploration and before development, beyond which actively under a lease cannot proceed without an approved development and production plan, as described in section 25 of this act.

A definition is included for "anti-trust." Specific findings, purposes and policies are enumerated in the Acts to preservation of free enterprise competition. To carry out this goal, the 1977 amendments asks the Attorney General and, in some instances, the Federal Trade Commission, to review and comment on a proposed leasing program, or regulations, and requires the Secretary of the Interior to consult with the Attorney General and the Federal Trade Commission in preparing portions of his annual report dealing with the promotion of competition. Review, comment, recommendations and reporting are to be based on evaluations of activities in light of anti-trust laws. The definition of "anti-trust" has been included to detail those statutes to be considered by the Attorney General and the Federal Trade Commission.

"Major Federal action" is defined to refer, for purposes of application of the procedures under the National Environmental Policy Act of 1969 ("NEPA"), to the term in NEPA "major Federal actions significantly affecting the quality of the human environment" (Section 102(2)(c); 42 U.S.C. 4332(2)(c).)

"Fair market value" is defined in order to provide a framework for the distribution of oil and natural gas obtained as a royalty or net profit share, or purchased by the Federal Government, as described in section 27. "Fair market value", which is to be a basis for such distribution if there is no regulated price, is to be the averaging of the price computed according to existing sales, or if there are no sales, an appropriate price determined by the Secretary. This definition is similar to that for "market price" in OCS royalty oil regulations, presently used in the sale of such oil (30 CFR 225a.2(i)).

Finally, subsection (b) adds a new definition for "frontier area." Throughout the 1977 Act, specific requirements and procedures have been established for lease sales and activities in previously undeveloped OCS areas. For example, the Secretary of the Interior is required to use new alternative bidding systems, and to provide for a comprehensive review of development and production proposals in such areas. This new definition makes it explicit that these requirements and procedures apply to all leasing areas, as that term is presently defined in present OCS regulations, rules and maps (43 C.F.R. 3301), where there has not been any development, as of October 1, 1975. Thus, although lease sales have been held off Southern California (OCS Sale No. 35—December 11, 1975) and off the Maryland, Delaware, and New Jersey Coasts, more commonly known as the Baltimore Canyon (OCS Sale No. 40—August 17, 1976),[44] these areas are still "frontier areas"

[44] Lease Sale No. 40 was declared invalid and void by a Federal District Court in *County of Suffolk et al. v. Secretary of the Interior et al.*, Civil Action No. 75-C-208, 7 Envt'l L. Rptr 20230, (E.D.N.Y. 1977) on February 17, 1977. That decision has now been reversed by the United States Court of Appeals for the Second Circuit. It is not known if future appeal to the Supreme Court will be taken. Nothing in this analysis should be interpreted to indicate an opinion by the Committee as to the validity or invalidity of Lease Sale 40. The Committee seeks only to make it explicit, that if such sale is valid, the area covered by such sale is still a "frontier area."

as there has not been, as of October 1, 1975, any development on the lease tracts awarded and, therefore, the provisions of the 1977 Act applicable to "frontier areas" would be applicable to the activities undertaken pursuant to the leases awarded after those sales.

In addition, this new definition makes it explicit that those leasing areas, such as in the Gulf of Mexico, as defined in regulations, rules, and maps, where there has been development prior to October 1, 1975, are not "frontier areas."

Finally, the committee determined that the Santa Barbara Channel should also be considered a "frontier area." Although leases were awarded and exploration, development, and production commenced in portions of the Channel in the 1960's, less than ten percent (10%) of potentially recoverable reserves have been extracted. The Santa Barbara Channel, the Committee felt, is unique. It is the only OCS area which had a major oil spill in 1969—resulting in great public clamor and a suspension, until recently, of all activities. Less than half the tracts in the Channel have been leased (66 of 139) and all those were leased prior to suspension of activities in 1969. Finally, what oil and gas that has been produced have been largely from only two fields—Dos Cuadras and Carpenteria—in the entire Channel. Because of the special environmental and other characteristics of the Channel and the demonstrated risks and problems affecting the coastal areas adjacent to the Channel, the Committee believed that it is, in fact, a "frontier area" entitled by its special nature, to all protections and procedures applicable under the 1977 Act to such areas.

Section 202.—National Policy

Section 202 amends section 3 of the OCS Act, originally a jurisdictional provision, and makes it into a declaration of national policy. The original provisions of section 3, providing that the subsoil and seabed of the OCS belong to the United States and that all existing rights of navigation and fishing in OCS waters are to be continued, are restated.

In addition, policy statements are included to make it clear that in administering not only the Outer Continental Shelf Lands Act, but also any other act applicable, directly or indirectly, to activities on the Outer Continental Shelf, responsible Federal officials must insure that activities on the shelf are undertaken in an orderly fashion, so as to safeguard the environment, maintain competition, and take into account impacts on affected States and local areas. These officials are also to consider the needs of affected States and local areas for information, participation and assistance so they can protect themselves from any temporary or permanent adverse affects of activities, and are to preserve the rights and responsibilities of all States and where appropriate, local areas, to protect their environment through their own regulatory procedures.

Finally, responsible Federal officials must insure that operations in the Outer Continental Shelf are safe. In making decisions at to the approval of exploration, development and production, and in assuring compliance with safety and environmental regulations, the officials are to require that activities and operations are conducted by well-trained personnel, and that such personnel use adequate techniques and precautions to prevent or minimize blowouts, loss of well control, fires, spills, interference with other users, and other possible damage.

Section 203.—Laws Applicable to Outer Continental Shelf

Section (a) amends section 4(a)(1) of the OCS Act of 1953 by changing the term "fixed structures" to "and all installations and other devices permanently or temporarily attached to the seabed" and making other technical changes. It is thus made clear that Federal law is to be applicable to all activities on all devices in contact with the seabed for exploration, development, and production. The committee intends that Federal law is, therefore, to be applicable to activities on drilling ships, semi-submersible drilling rigs, and other watercraft, when they are connected to the seabed by drillstring, pipes, or other appurtences, on the OCS for exploration, development, or production purposes. Ships and vessels are specifically not covered when they are being used for the purpose of transporting OCS mineral resources.

Certain technical and conforming changes are made to subsections of section 4, including the deletion of the original subsection 4(b), relating to the jurisdiction of the U.S. district courts. Language similar to this subsection has now been included as part of the new section 23, which describes the procedures and jurisdiction related to court actions under this act.

Establishment of boundaries

Section 4(a)(2) of the 1953 Act, as amended by section 19(f) of the Deepwater Port Act, Public Law 95–627, 88 Stat. 2146, provides that State laws of adjacent States are to be applicable to the OCS "to the extent that they are * * * not inconsistent with this act or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted," and that the State laws to be applied to OCS activities are to be those in effect at the time they are to be applied. The President, under the 1953 Act was to promptly determine and publish lines projecting seaward from the boundaries of States adjacent to the OCS so as to enable applicable State laws to be ascertained.

The committee, although concerned that such determinations have still not yet been completed, has left this section untouched.

However, the committee strongly believes that the President should promptly determine and publish such lines and establish procedures, if necessary, for the settling of any disputes relating to the projection of such lines, prior to such determination. These lines would not, of course, be true legal boundaries between States, but only the base for Federal application within Federal lands, for a determination of applicable State law.

The committee was also concerned about the settling of any international boundary disputes concerning the Outer Continental Shelf. Such "international boundaries," refer only to the submerged lands of the OCS and do not affect any territorial claims to the superadjacent waters. At its hearings, the committee was informed by the Department of State that the United States and Mexico on November 24, 1976, entered into an agreement on provisional maritime boundaries out to 200 miles in the Gulf of Mexico and the Pacific Ocean. These provisional lateral boundaries will be applicable while technical problems are worked out and a formal treaty completed. No such preliminary agreement has yet been worked out in relation to the United

States-Canada boundary. The committee did not establish any requirement for the formal establishment of international boundaries, but expects procedures to be promptly established for the resolution of any international OCS boundary disputes.

Safety regulations as to foreign vessels

Section 4(e) of the OCS Act has been amended by adding a new paragraph (3) to grant the Coast Guard authority over foreign vessels operating in the OCS. Specifically, any foreign vessel conducting any OCS or OCS-related activity, including the transportation of OCS resources from an OCS facility or structure, must agree to be subject to the same laws, regulations and rules as U.S. vessels, as to the operation, construction, design and equipment of such vessels, as to adequate training of the crews of such vessels, and as to the limitation on control of discharges from such vessels.

The new provision avoids any problems of international law by making application of such regulatory authority, a condition precedent of activity by a foreign vessel. Thus, the owner or operator of a foreign vessel wishing to undertake OCS or OCS-related activities must agree prior to undertaking such activities to be treated like a U.S. flag vessel. He is not forced to be so bound, unless he wishes to participate in United States off-shore activity. This provision does not, in any way, intend to cover foreign vessels not undertaking OCS or OCS-related activity or merely undertaking passage through the waters above the OCS. Similarly, this new provision avoids possible foreign policy conflicts by allowing such agreements as to regulatory requirements to be satisfied if the foreign vessel is in compliance with foreign state standards which are, as determined by the Coast Guard, "substantially" comparable to U.S. standards.

Finally, to handle exigent circumstances, an agreement with a foreign vessel can exempt such vessels from design or equipment requirements when it is used for a designated emergency call.

The Bureau of Customs has determined that artificial islands and structures, including rigs, are points within the United States and within the coastwise laws of the United States, even though located outside territorial waters.

Under that determination, the transportation of passengers and merchandise between islands, structures and rigs, or between islands, structures and rigs and the United States while engaged in OCS activities is covered by the Jones Act (46 U.S.C. 883). Thus, only U.S. owned, built and documented vessels can be used for such transportation.

This determination is under review and the committee, by this subsection, does not in any way negate or supersede existing law. This subsection only applies to allowable transportation by foreign vessels and does not apply to situations when such vessels are banned by the Jones Act, unless the Jones Act is waived under existing laws.

Section 204.—Outer Continental Shelf Exploration and Development Administration

This section amends section 5 of the Outer Continental Shelf Lands Act of 1953 by providing detailed requirements for the administration of leasing on the OCS.

Subsection (a) of section 5 is now to provide that leasing be administered by the Secretary of the Interior,[45] who is to promulgate all necessary regulations to carry out his leasing responsibilities. These regulations are to be applicable to any lease in effect at the date of promulgation, as well as to any lease to be let in the future. Of course, the Secretary is not required to repromulgate regulations already consistent with the 1977 amendments. He may retain present appropriate and effective rules.

The original subsection (a) of section 5 of the OCS Act granted very broad authority, with few guidelines, to the Secretary to promulgate regulations. The amended subsection, while not limiting the generality of the power granted to the Secretary to promulgate any appropriate regulation, does provide statutory guidelines and requirements for certain types of regulations, and together with the requirements of other subsections provides a machinery for coordinated bureaucratic action.

Retroactivity of regulations

Some concern was raised in the committee as to the retrospective application of new regulations. Of course, the present constitutional requirement that any retroactive rule be "reasonable" is applicable. Thus, any regulation must be in furtherance of the policies of the Act and new or amended regulations must be "necessary and proper in order to provide for the prevention of waste and conservation of the natural resources" of the OCS and for the "protection of correlative rights."

Specific concern was raised in the committee that unnecessary regulations that might delay expeditious exploitation of OCS resources might be promulgated. To insure against such a result, the committee provided that any regulation: (1) That imposed additional requirements on lessees; (2) who held a lease prior to the date that a new regulation is proposed; and that (3) resulted in undue delays—must be justified. Specifically, the Secretary must make a specific finding, with appropriate notice to all interested parties, that: (1) Additional requirements are being established; (2) that these requirements could result in undue delays; and (3) that nonetheless, he feels it necessary to adopt this regulation to prevent serious harm or damage. As with any other administrative action, such a finding and its concurrent regulatory action is not to be set aside unless "arbitrary, capricious, an abuse of discretion," or otherwise not in accordance with law (5 U.S.C. 706(2)(A)).

Coordination with other agencies and States

At the request of the committee, the Office of Technology Assessment prepared a study of the present OCS regulatory framework.[46] This study confirmed the committee's belief, supported by the testimony of numerous witnesses, that there presently exists a lack of coordination between Federal agencies and the need for a centralized information source. Section 5(a) requires, therefore, the Secretary to

[45] Of course, the committee is aware of the possibility that some of leasing procedures will be administered in coordination with a new Secretary of Energy. See analysis discussion as to section 508.

[46] Office of Technology Assessment, "Staff Report on the Federal Rule in OCS Oil and Development, with Addendum, Agency by Agency Analysis (May 1977)."

cooperate with the relevant agencies of the Federal Government in enforcing regulations. Section 5(g) requires coordination of agency activity to facilitate "one-stop" shopping. The Secretary of Interior is to act as a "clearinghouse" for permit, license, lease, and other applications, hearings, and approvals involved in OCS activities. Industry, States, and citizens should be able to approach one source for regulatory information. This provision would mandate the Secretary to perform such coordination and, of course, be subject to oversight criticism if he fails to do so. He is to establish procedures to avoid inconsistent or duplicative requirements. He is to receive prompt notice from other agencies as to actions that affect the OCS and recommend changes as appropriate. Finally, if environmental impact statements are required for steps in the OCS process, the Secretary would be the lead agency and under this proposed section, mandated to attempt to provide for a single environmental impact statement process, possibly involving a series of permits or licenses for different agencies—but as to the same activity.

In order to insure adequate consideration of competition issues, the 1977 amendments require the Secretary of the Interior to ask for and consider the views of the Attorney General and the Federal Trade Commission as to any matter which may affect competition. Thus, for example, in utilizing various bidding systems and applying those systems, under amended section 8 of the OCS Act, he must inform the Attorney General of his regulatory procedures, including scheduled lease sales and joint bidding bans. Of course, as specifically provided in section 8(e), any statement by the Attorney General or the Federal Trade Commission is advisory only. It does not bind them in any future possible litigation or failure to litigate.

Finally, to insure adequate state input at all stages in the OCS regulatory and leasing process, the Secretary of the Interior is also to coordinate his regulatory promulgation and enforcement with any relevant agencies of affected States and, under subsection (g), notify such States of OCS-related actions by other Federal agencies. There is, of course, no intent to require the Federal Government to enforce compliance by permittees and lesees with State laws or regulations as to activities on the Outer Continental Shelf, except for those required by the "consistency" provisions of the Coastal Zone Management Act.

Suspension provisions

The Secretary is to provide regulations for the suspension or temporary prohibition of operations or activities pursuant to a lease or permit in particular circumstances. Suspension can occur, if requested by the lessee and approved by the Secretary, to insure proper development, to allow for adequate transportation of resources or more generally, to further the national interest. The intention of this paragraph is to provide that suspension and a concurrent extension of the 5-year lease term may be granted, upon request of the lessee or permittee, so as to allow, for example, unitized exploration or development, common pipeline placement, or proper and safe delivery by tankers.

Suspension is also permitted without any request by, and even over the objection of the lessee, if there is a threat of serious, irreparable or immediate harm or damage as a result of any operation or activity.

Section 23(b) provides that the lessee can seek review of any such suspension through a proceeding in the U.S. district court.

As the reason for the suspension is usually through no fault of the lessee, any permit or lease affected by a suspension or temporary prohibition is to be extended for the period of such suspension or prohibition. If, however, a suspension or prohibition is a result of gross negligence or willful violation of the terms of a lease or permit or of applicable regulations, no such extension shall be permitted.

Cancellation provisions

The Secretary is also required to develop regulations for the cancellation of any lease or permit when continued activity would probably cause serious and unjustifiable harm or damage and such harm or damage would not decrease to an acceptable extent over a reasonable period of time. The Secretary's decision to cancel is thus based on a twofold consideration, balancing of risks, and time. First, the criteria for cancellation is a showing of harm or damage which outweighs the advantages of continued activity. Second, it was the intention of the committee that the Secretary would first suspend or temporarily prohibit activities when there is a potential of serious harm. Such suspension would be for a period of 5 years, either at one time or through a series of suspensions, or for a shorter period when requested by the lessee and approved by the Secretary.

Cancellation under subsection (a) are in the nature to environmental cancellations, without any fault by the lessee or permittee. Subsections (c) and (d) of this section provide the procedures for cancellations or termination because of improper activities or noncompliance by a lessee or permittee. An environmental cancellation of a lease or permit can only occur after a hearing, and the determination by the Secretary after that hearing would be subject to review in an appropriate district court as provided in section 23(b).

The committee wishes also to insure that adequate compensation would be granted to a lessee or permittee when cancellation occurs through no fault of the lessee or permittee. A cancellation for failure to comply with the Act, lease terms, or applicable regulations, under the procedures of subsections (c) and (d) of this section, would ordinarily preclude compensation to a lease holder. Cancellation for environmental reasons would be compensated but differently for leases issued before or after enactment of the 1977 amendments.

For cancellation of a lease issued prior to enactment of the 1977 amendments, the lessee would be entitled to the fair market value of the lease interests, at the date of cancellation. This fair value would be the revenues expected from development and production, if the cancellation had not occured, minus the costs anticipated from such production to obtain those revenues. For cancellation of a lease issued after enactment of the 1977 amendments, a two fold standard is established. The lessee would be entitled to the value of the rights or restitution of the excess of costs over revenues, whichever is less. The committee believed that such a division as to compensation for old and new leases was appropriate. Pre-existing lease holders acquired their interests without the legal possibility of cancellations.[47] Thus,

[47] See *Gulf Oil Corporation* v. *Morton*, 493 F. 2d 191 (9th Cir. 1973); *Union Oil Company* v. *Morton*, 512 F. 2d 493 (9th Cir. 1975).

if cancellation is to be imposed, they are entitled to the fair value of their rights. Lessees who obtain their rights after enactment of the 1977 Act would have specific notice of the possibility of cancellation and could thus include this risk in calculating their bids. Any expenses or costs, not matched by revenues derived from the lease interests, would be totally compensated. The value of the resources remaining in the lease tract, unless less than the uncompensated costs and thus part of the risk undertaken by the lessee at the time of his bid, would not be.

Finally, the committee determined that if any lease, old or new, is canceled for national security or defense reasons, this is a decision by the Federal Government to assume responsibility for that lease tract and the lessee is entitled to fair value rather than restitution.

Clean air requirements

The committee was concerned about the effects of OCS activities on the quality of air above the leasing areas of the Shelf and on the quality of air above adjacent on-shore coastal areas. It, therefore, adopted provisions requiring the Secretary to promulgate regulations to insure adequate air quality. Such regulations deal with two specific air quality issues.

Under the Clean Air Act, 42 U.S.C. 1857, States maintain primary responsibility for assuring air quality within their jurisdiction. Such responsibility is undertaken by the establishment of an implementation plan to achieve, maintain, and enforce air quality standards. The 1977 amendments require the Secretary to promulgate regulations, and to be responsible, for control of the impacts of emissions occurring on the OCS which affect on-shore ambient air quality. In promulgating these regulations, the Secretary should seek to insure that OCS activities do not prevent the attainment of air standards in adjacent States or hinder the programs established by States by their implementation plans. It is not the purpose of this provision to extend the present coverage of the Clean Air Act (requiring, for example the establishment of primary classifications). It is intended that in establishing procedures and standards for OCS activities under this provision, the Secretary would consult with the proper federal, state and local officials and would take into consideration standards established by the Clean Air Act and any applicable state implementation plan.

Secondly, the committee requires the Secretary to promulgate regulations to insure air quality above OCS areas. While reference can be made to standards and guidelines established by the Clean Air Act, it is not intended that the Secretary be bound by the Clean Air Act, but rather that he promulgate, after consultation with other appropriate Federal officials, his own regulations as to OCS operations and their effect on the quality of the air above the OCS.

To insure adequate consideration of air quality regulations, provisions have been included in section 25, on development and production plans to require modifications or disapprovals for failure to comply with clean air requirements.

Rights of way

The committee revised section 5(e) of the OCS Lands Act of 1953 to give the Secretary of Interior, and where appropriate, the Depart-

ment of Transportation, broadened authority over the granting of pipeline rights-of-way on the Outer Continental Shelf. Specifically, the limitation on the authority regarding pipelines to matters pertaining to the survey, width and location has been eliminated and the Secretary's general regulatory authority under section 5(a)(1), to regulate off-shore pipelines in the interest of conservation and for the prevention of waste, is made explicit. In addition, the subsection has been revised to assure maximum environmental protections as to pipeline placement and safety. Among other things, the subsection now requires use of the best available and safest technology.

The committee intends that this requirement refer to technology actually available.

It is the committee's express intent that the Secretary of Transportation maintain his present authority, pursuant to his responsibilities under the Natural Gas Pipeline Safety Act of 1968, and otherwise through the Office of Pipeline Safety, as to off-shore pipelines. The committee is aware of the memorandum of understanding between the Department of Transportation and the Department of Interior and intends that the jurisdictional responsibilities under that memorandum be maintained.

Rates of production

Subsection (f) provides for application of provisions as to the rate of production of oil and gas on a lease. It should read in light of section 506 of this 1977 Act which requires the Secretary to make an independent determination of such rates and their validity. The Energy Policy and Conservation Act, Public Law 94–163, 89 Stat. 871, section 106, 42 U.S.C. 6214, allows the President to require crude oil and mineral gas or both to be produced from fields on Federal land, including the Outer Continental Shelf, at maximum efficient rates of production, and at temporary emergency production rates during a severe energy supply interruption. Paragraph (1) of subsection (f) provides that if any such rule or order is issued by the President, under the Energy Policy and Conservation Act, or any other provision of law, the lessee is to produce at rates consistent with such rule or order. Paragraph (2), however, provides that if no rule or order is established by the President, the Secretary is to promulgate regulations to insure the maximum rate of production and that the lessee is to produce oil or gas, or both, at rates consistent with any such regulation.

This subsection essentially adopts the language of section 106 (e)(1) of the Energy Policy and Conservation Act (Public Law 94–163) in defining the maximum efficient rate of production and is similar to the language used in section 7420(6) of the Naval Petroleum Reserves Production Act of 1976 (Public Law 94–258). This subsection recognizes that engineering, technological, economic, and safety factors must be considered in setting such a rate.

The Secretary is granted the discretion, after such rate is established, to permit variances when necessary. Industry would have the right to comment on any proposed regulations, as would any other interested citizen, prior to the promulgation of a final and effective regulation.

Other provisions

Subsection (a) also specifically instructs the Secretary of the Interior to promulgate regulations for assignment or relinquishment of leases; unitization, pooling and drilling agreements; subsurface storage of oil and gas, drilling arrangements, and for the prompt and efficient exploration and development of a lease area.

Subsection (b) makes it explicit that the issuance, extension or continuance of any lease is conditioned upon compliance by the lessee with the regulations issued under the Act. They are to be considered part of the lease terms. Any regulation promulgated after the issuance of a lease, if reasonable, would have retroactive application.

Subsections (c) and (d) readopt into section 5 former paragraphs (b)(1) and (b)(2), respectively.

Subsection (c) provides for the cancellation of any non-producing lease for failure to comply with the Act, the lease terms, or applicable regulations. The holder of such non-producing lease which is cancelled may secure review of that decision in the U.S. district court, as provided in section 23(b).

Subsection (d) provides for cancellation of any producing lease for failure to comply with the Act, lease terms, or applicable regulations. Such a cancellation can only occur after a proceeding in the appropriate U.S. district court, as provided in section 23(b).

Subsection (h) provides that after the date of enactment of the 1977 Act, no lessee can flare natural gas from any well, unless the Secretary of the Interior makes a specific finding that such a prohibition is not practicable. Practicable includes economic and efficiency considerations. Section 501 of the 1977 Act requires an annual report as to any wells that the Secretary permits to flare natural gas.

Section 205.—Revision of Bidding and Lease Administration

Section 205 amends section 8 of the OCS Lands Act by providing new bidding options and procedures.

The original OCS Lands Act of 1953 provided that leases were to be awarded to the highest responsible qualified bidder, through competitive and sealed bidding procedures on the basis of a cash bonus, with a fixed royalty of no less than 12½ per centum, or on the basis of a royalty, at no less than 12½ per centum, and a fixed bonus. Subsection (a) of section 8 is amended to still require competitive, sealed bidding procedures and to still authorize bonus and royalty bids, but now also to specifically authorize eight (8) new bidding systems and to generally authorize any other new bidding system: (1) A fixed cash bonus bid with a diminishing or sliding royalty; (2) a cash bonus bid with a fixed share of the net profits of not less than 30 per centum; (3) a net profit share bid with a fixed cash bonus; (4) a cash bonus bid with a fixed royalty of no less than 12½ per centum and a fixed net profit share of no less than 30 per centum; (5) a fixed cash bonus determined by acreage of not less than $62 per hectare with a "work commitment" in dollar amounts as the bid variable; (6) a fixed royalty of no less than 12½ per centum or a fixed share of the net profits of not less than 30 per centum with a "work commitment" in dollar amounts as the bid variable; (7) a fixed cash bonus determined by acreage, of not less

than sixty-two dollars ($62.00) per hectare, with a fixed royalty of not less than 12½ per centum or a fixed share of the net profits of not less than 30 per centum, and with a "work commitment" in dollar amounts as the bid variable; and (8) any other system of bid variables, terms and conditions in the Secretary's discretion.

Detailed procedures are also included in this subsection for the quantification of bids and the holding of lease sales using the various systems.

Several options provide for minimum royalties and net profit share. It might become uneconomic during later phases of production to exploit resources because of these minimums. Therefore, in paragraph (3) of the subsection, the Secretary is given the authority, after production has commenced, to reduce or eliminate any royalty of net profit shares so as to encourage complete exploitation of the resources in a lease area.

One problem of the present front-end bonus system is the need for a potential lessee to secure large amounts of capital for the payment of the front-end bonus immediately after a winning bid is accepted. Paragraph (2) of subsection (a) would permit the Secretary to possibly alleviate this problem by announcing, prior to a lease sale, that a cash bonus may be paid in installments according to a schedule, and specifically detailing the schedule. While the Secretary retains the discretion to determine the number of installments, the amounts or percentages to be paid in each installment, and the date of completion of payment, he cannot defer total payment for more than 5 years from the date of the lease sale.

Work commitment bids

Subparagraphs (G), (H), and (I) of paragraph (1) of subsection (a) specifically authorize use of a "work commitment" bid.

Representatives of small and middle-sized energy companies suggested that competition would be enhanced if "work commitment bidding" was authorized. In addition, this system would encourage rapid and extensive exploration and development of our off-shore resources. With more funds committed to exploration, it could reasonably be expected that the discovery rate and production time schedules will be substantially accelerated.

To insure that only responsible parties will obtain leases and to provide a financial return to the government, the Secretary must first set a minimum cash bonus, a minimum royalty, a minimum net profit share, or a minimum bonus and minimum royalty or net profit share. He would then offer a lease tract on the basis of the highest dollar amount promise to conduct activities on a tract area.

The "work commitment" would not merely be a general or even specific description of promised activities. Rather, it would be an actual amount to be spent in dollars. The committee adopted this "work commitment" procedure for three reasons. First, without a dollar amount as the bid variable, a work commitment bid would grant too much discretion to the Secretary in choosing the successful bidder. Under the 1977 amendments, while he retains the power to reject any insufficient bid or a bid from an unqualified bidder, whether under this or any other alternative, he can only accept the highest bid, based

on dollar amounts, under the work commitment alternative. Second, without a dollar amount as the variable, the selection of a successful bidder could lead to administrative conflicts as to a "best bid". Third, the committee was concerned that an unstructured work commitment bid might lead to unnecessary activity. To avoid this result, paragraph (5) makes it explicit that this dollar amount bid is a fixed promise to the Government. The Secretary is to carefully monitor activities to insure that unnecessary activity is not undertaken. In addition, the successful bidder has to pay to the Government the difference between the dollar amounts stated in the work commitment bid and the amounts actually spent. Of course, the lessee is free to spend more than the amounts provided in the bid.

Paragraph (5) also details other requirements to assure responsible activities pursuant to a work commitment bid. The lessee must, upon issuance of the lease, submit either a cash deposit, performance bond, or other guarantee. The amounts of such deposit, bond or guaranty can be reduced, as exploration activities continue, in light of the remaining obligation under the bid.

This deposit, bond, or guaranty is an assurance of diligence. It is forfeited if the Secretary determines that work is not being satisfactorily and faithfully undertaken. The lessee must submit periodic reports as to his activities. The Secretary is to review the reports and through this and other inspection techniques, insure proper action. He has the power to terminate activities if he determines that additional work would be unnecessary or cumulative. At the completion of activities, whether as determined by the lessee or by the Secretary when the initial lease period, including extensions, is over or when he finds additional work unnecessary or cumulative, any unspent amounts in the original bidded amount are to be paid to the Secretary. Finally, this paragraph details what costs are to be included as being valid expenditures towards a work commitment amount.

Nonenumerated bidding alternatives

The Secretary is specifically given the authority to use any other bidding system which he "determines to be useful to accomplish the purposes and policies" of the 1977 amendments. Two examples of possible alternatives are the "percentage leasing option,"[48] commonly called the Phillips Plan and the "dual leasing option" described earlier in this analysis.[49]

In using any bidding system not specifically described in the bill, the Secretary, of course, is bound by the provisions of this section which require rulemaking prior to use of any bidding option other than front-end bonus or royalty (paragraph (4)), which detail the

[48] S. 521, as passed by both the House and Senate, in the 94th Congress, specifically authorized use of percentage leasing systems which allows a group of companies to secure individual working interests in a lease area and to proceed to jointly explore and develop the lease area. Detailed provisions provided for the awarding of leases, the establishment of a joint working group and that the Government would be a nonvoting party to any such group. The committee, in light of testimony received during the 95th Congress that the system could be unworkable, deleted these provisions from the 1977 amendments. The committee did not, in any way, intend to bar the Secretary from using this system, of course, in accord with requirements for adequate regulations, for compliance with the purposes of use of new systems, and for providing reports to Congress on use, effectiveness and problems.

[49] As described in the analysis as to the definition of the term, "lease", special rules apply as to use of a dual leasing system, including the submission of a report to Congress prior to its use.

criteria for use of bidding systems to accomplish the necessary purposes and policies (paragraph 5), and which allow adequate congressional oversight by requiring periodic reports as to use, benefits and deficiencies of bidding systems and by requiring a statement describing systems to be used in any upcoming year.

Rulemaking

Paragraph (4) of subsection (a) specifically requires adequate rulemaking procedures prior to use of any bidding system not allowable prior to the 1977 amendments, and to allow Congress to review these procedures, and inferentially, use of any new system.

All regulations, rules, orders, or other administrative decrees establishing the procedures for any of the new bidding systems, including any nonenumerated system, and any modifications of those procedures, shall first be published as proposed regulations, then followed by public hearings and finally promulgated as a rule. The language of the original OCS Act of 1953, as readopted by the 1977 amendments, require that the awarding of leases, include use of bidding systems, must be pursuant to "regulations promulgated in advance." The purpose and intent of this paragraph is to make it clear, that, at least as to new bidding systems, notice and public hearings are required prior to final promulgation of a regulation and any modification. Such regulation would, of course, be necessary, for example, as to use of work commitment bids, and net profits bidding options, involving rules as to calculation of net profits.

This paragraph also requires the submission of any rule or regulation as to new bidding systems to Congress at least 30 days prior to its final promulgation. Paragraph (5)(D) requires the Secretary, in an annual report, to tell Congress of any plans to use new bidding systems in an upcoming year and to evaluate the expected benefits or costs of any new system. This paragraph would provide that, in addition, prior to final promulgation of any regulation, Congress will have another look at the new system and the procedures to be used for implementation of those systems.

Of course, as provided in amended section 5 of this Act, any proposed regulations must be forwarded to the Attorney General and the Federal Trade Commission for their views as to their competitive impact. Similarly, they should be prepared after adequate consultation with other affected Federal agencies and with affected States.

Mandated use of new bidding systems

Under existing law the Secretary is permitted to offer oil and gas leases on the basis of either (1) a cash bonus bid with a royalty fixed at no less than 12½ percent of the gross revenue from the lease, or (2) on the basis of a royalty rate bid with a fixed cash bonus. Since the OCS Lands Act was approved in 1953, virtually all OCS leases have been offered for cash bonus bids with a royalty rate fixed at 16⅔ of the gross value of production.

The Department of the Interior held a small scale test of royalty bidding in September 1974.

Witnesses before the committee indicated that the high front-end bonus bids may have created a barrier to the entry of small and

medium-sized oil firms as well as other potential exploiters, to the OCS activity; and that these types of bids do not, after the completion of exploitation of a lease area, provide a fair return to the Government.

Others, including representatives from some of the larger oil companies, indicated their satisfaction with the present front-end bonus system in that it provides for rapid exploration and recovery of resources and has worked so as to provide maximum revenue with no risk to Government, and with ample opportunity for all to participate.

As indicated earlier, the 1977 amendments authorizes new bidding options. The basic thrust of all these new options is to reduce the reliance on large front-end cash bonuses as the means of obtaining a fair price for the public's property. The committee wants to authorize lease allocation systems that would encourage the widest possible participation in competitive lease sales consistent with receipt by the public of fair market value for its resources. The committee believes that arrangements can be effective in shifting new Government revenue away from initial bonuses and into deferred payments made out of a leaseholder's profits based on actual production of oil or gas.

In order to assure that these new bidding alternatives are used, the 1977 amendments limit the Secretary's authority to use the cash bonus—fixed royalty system, which has been the historical method of OCS bidding. The Secretary would have to use one of the new bidding systems in at least 50 percent of the total area offered for lease each year during the next 5 years, in frontier areas. However, if during the first year after enactment, the Secretary finds that compliance with this limitation would unduly delay OCS development, he may exceed the limit after reporting to Congress his findings and reasons. After the first year, the Secretary can only exceed the limitation if he demonstrates to Congress, in a report with specific findings and detailed reasons, that using new systems in 50 percent of the lease area offered would unduly delay efficient development, result in less than a fair return to the Federal Government, or result in a reduction of competition. Congress would have thirty (30) days to review the report and could disapprove and thereby, nullify the request to exceed the limitation by a resolution of either House.

It was the intention of the committee that there be a clear mandate given to the Secretary to require him to use bidding systems other than the cash bonus bid. However, it did provide the two limited "escape hatches" in recognition that there could be administrative problems involved in implementing new concepts and procedures.

Finally, the committee desired not to give preference to any class or type of bidders for any lease tracts. Some witnesses were concerned that use of bonus bid systems or nonbonus bid systems by the Secretary in any particular area might effectively bar aggressive competition.

By selecting the "best tracts" for offering under bonus bid systems, or for offering under nonbonus bid systems, he could limit the ability of some companies to participate in lease sales for these "best tracts." To avoid such a possibility, the committee, in paragraph (6) required that, generally, he randomly select those areas to be offered under a bonus bid system and those which would be offered under a nonbonus

bid system. The random selection method is to be used only to select which tracts are bonus bid tracts and which are not bonus bid tracts. Once nonbonus bid tracts are identified, there is no requirement or random selection as to which of the alternative systems are to be used.[50]

To implement this provision, paragraph (6) requires, after nominations, and before selection of tracts, to publicly close, after adequate notice, the tracts under a random selection method. Of course, the random selection method to be used must also be described in advance of selection. Following such selection, the results are also to be published.

The committee was aware that certain circumstances might necessitate a straight, rather than random selection. The Secretary is therefore given the authority to withdraw any particular tract or tracts from use of the random selection technique and offer it or them under a bidding system he designates. However, exercise of this discretion would be carefully monitored as the Secretary could only exclude a tract if he makes a specific finding that random selection would "unduly delay or hinder exploration, development and production * * * or prevent the receipt of fair return * * *."

Review of alternate lease systems

The obvious intention of the committee in revising the procedures for use of new bidding systems is to determine what system or systems, in what situations, provide the best means to lease our federal resources in the Outer Continental Shelf. Subsection (a) is intended to provide procedures to answer this question. In addition to mandating use of new systems, to insure they are tested and studied, and to providing for random selection, to insure fair tests and studies, this subsection details four additional techniques to insure use of the best systems in the best places.

First, standards to be applied by the Secretary in selecting bidding alternatives are provided. The standards include providing fair return to the Federal Government, increasing competition, insuring safe operations, avoiding undue speculation, avoiding unnecessary delays in exploitation, discovering and developing resources in an efficient and timely manner, and limiting administrative burdens on both Government and industry.

Second, to secure as much information as possible as to the effect and value of alternative leasing systems, the Secretary is permitted to require bids to be submitted under more than one bidding system.

Third, the Secretary is authorized to require each bidder to submit bids in accordance with more than one bidding alternative, and then is authorized to select the bid that best satisfies the standards to be applied. Unlike the first multiple bid procedure, which is to be for statistical purposes, this multiple bid procedure would be to obtain the best bid.

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[50] For example, if the Secretary determines that one hundred tracts are to be offered in the upcoming sale, he then decides, in accordance with his annual mandate of use of new systems, how many are to be offered under the bonus bid option and how many under other options. If he decides on a 50–50 split, the 50 to be offered under each is determined by random selection. Those chosen for use of bonus bids will be offered under that system. Those chosen for use on non-bonus bids can be offered under any one or more of the alternatives as the Secretary in his discretion determines.

Finally, the Secretary is to annually report to Congress as to his use of the various bidding options. In addition to listing all previous and anticipated lease sales, he is to evaluate the benefits and costs associated with conducting lease sales using the various systems, to explain why any particular bidding system is not or will not be used, to explain if bidding systems other than the front-end and cash bonus bid were not actually used in areas actually leased, and to analyze the capability of each bidding system to accomplish the standards for bidding.

Joint bidding restrictions

While there is no provision in the OCS Act of 1953 as to limiting joint bidding, the Secretary has prohibited, by regulation, any joint bid, where more than one of the joint bidders controls, directly or indirectly, an average daily production of 1.6 million barrels or more of oil or its equivalent. The recently enacted Energy Policy and Conservation Act, Public Law 94–163, 89 Stat. 871, 42 U.S.C. 6213, requires the Secretary of the Interior to preclude joint bids on OCS leases when more than one of the joint bidders is chargeable with production of 1.6 million barrels, or more, of crude oil or its equivalent, per day. However, the Energy Policy and Conservation Act allows the Secretary of the Interior to exempt any joint bidding prohibition for leases in frontier high risk, or high cost areas.

Most future Outer Continental Shelf activities will be in frontier areas. Moreover, the more risk in the lease area as to finding resources, the lower, rather than higher, the bid would be, and thus the less, rather than more, there will be a need for capital from more than one large company. The committee was concerned that the Energy Policy and Conservation Act might be construed, improperly, in light of the intention of Congress, to eliminate the present prohibition of joint bids in appropriate circumstances. To clarify and enact into positive law the intent of the committee, paragraph 7 of subsection (a) provides that the Secretary is to establish regulations permitting joint bids in appropriate circumstances. The regulations, however, cannot allow joint bids where more than one of the joint bidders controls directly or indirectly an average daily production of 1.6 million barrels a day in crude oil or its equivalent. To encourage competition, a larger company is permitted to combine with any number of smaller companies, but is to be precluded from combining with another large oil company in bidding on a lease. What is a large company, for these purposes, is left to the discretion of the Secretary. The Secretary has recently adopted the 1.6 million barrel per day standard, and the value of this standard in promoting competition has not been adequately tested. Thus, the committee set this figure as to the maximum amount to be used to determine what is a large company. However, as more information is obtained, the Secretary is given the discretion to set a lower barrel per day standard, by regulation.

Lease terms

Subsection (b) of the amended section 8 provides for the terms of a lease. Under the original OCS Lands Act of 1953, a lease was to be for 5,760 acres. However, the committee learned in its testimony that acquiring leases for that amount of acreage might lead to inefficient

exploration and development, and possible administrative burdens to both the Government and potential lessees. In some situations, structures or geological traps containing reserves of oil and natural gas or compact, concrete parts of such structures or traps, should be explored, developed, and produced as an entity, thus providing the most efficient exploitation. However, some structures or traps might be so large that only a few companies would be able to afford to bid and develop such leases, and thus, competition would be minimized. Finally, leasing of overly-large areas might avoid more than one exploration strategy, and thus preclude discovery and the efficient development of resources. To resolve these problems, paragraph (1) of subsection (b) eliminates the prior absolute limitation of 5,760 acres and provides that a lease can cover any larger area designated by the Secretary, when he finds such larger area makes a reasonable economic production unit. Any tract offered, whether 5,760 acres or more, must be compact, consisting of contiguous areas.

The present OCS Lands Act provides that a lease is for a period of 5 years, and then as long thereafter, as there is production or approved drilling operations. Concern was raised at the hearings of the committee that in some areas of unusually deep water or adverse weather conditions it might not be possible to complete exploration, even if the lessee was duly diligent, within the 5-year period. Paragraph 2 of subsection (b) provides that a lease is to be for 5 years, or 10 years when necessary to encourage exploration and development in areas of unusually deep water or adverse weather conditions. Such longer period might be necessary, for example, to allow careful exploration and mobilization of new technology if needed for such exploration or for further activities in event of a discovery. As in the original provision, a lease is to continue beyond the initial period, as long as oil and gas is produced or approved drilling operations are conducted.

As described in detail in the analysis of the new definition of "lease", the 1977 amendments also allows leases to be for: (1) exploration alone; (2) development and production alone; (3) exploration, development and production; or (4) exploration and then development and production of part of a lease area. A lease not providing for a right to explore, develop and produce is subject to disapproval by a joint resolution of Congress.

The committee intends that competition be encouraged not only in the leasing and bidding states itself, but all along the OCS resource management process. Particularly, the committee desired to insure that the present competitive nature of the oil and gas refining procedures be encouraged. Assuring adequate supplies to small and independent refiners would, in addition, encourage competition in the marketing phase as many, if not most of the independent marketers receive a major portion of their supplies from small and independent refiners. Thus, in section 27, procedures are established for royalty or net profit share oil to go to such refiners. In addition, in this section, the Secretary is required to include as a lease term, a mandate that a lessee offer small and independent refiners twenty per centum of the crude oil, condensate and natural gas liquids produced from a lease. This is intended to be a "set aside" only. The price would be the market value. If these small or independent refiners do not claim the

twenty per centum, these resources can be distributed as under ordinary procedures. It is intended that the procedures for offering these resources would be the same as presently applied, and readopted in the 1977 amendments, to federal royalty or net profit share oil.

Certain other specific provisions are required to be included in any lease. A lease is to provide that the lessee pay the value as determined by the bidding system utilized in the sale of his lease; to provide that the Secretary may suspend or cancel the lease in circumstances described by regulations issued pursuant to this Act; to require that the lessee exploit the resources in his lease area with due diligence and in accordance with the development and production plan approved by the Secretary of the Interior; and to provide for payments of rentals. In addition, other provisions may be included in a lease prescribed by the Secretary at the time of offering the area for lease.

Due diligence requirements

Subsection (b) requires the Secretary to include as a lease term a requirement of diligence in activities. This provision is intended to assure expeditious and proper activity. With specific regard to 10 year leases, it is intended that enforcement of this diligence requirement would limit concerns raised before the committee about the possibility of non-assiduous exploration.

Similarly, subsection (d) requires that the Secretary of the Interior make a finding that any lessee, about to be awarded a lease, is complying with all the due diligence requirements on all leases currently in his possession. Unless such a finding is made, a new lease may not be granted.

The purpose of this subsection, and the purpose of the earlier provision in subsection (b)(2), requiring due diligence as a lease term, is to supplement those subsections dealing with cancellation of a lease for failure to comply with applicable regulations, such as those providing for rates of production. No company should be able to withhold resources from the Outer Continental Shelf by improperly shutting in wells or delaying exploration or production. If a lessee acts in conformance with an exploration plan or development plan, as defined by regulation, and approved by the Secretary, he is, of course, acting with due diligence and would not be deprived of a lease.

It is intended that the prohibition on the granting of a lease because of lack of due diligence on other leases would be in effect only as the company continues in violation of due diligence requirements. Thus, any potential lessee is not disqualified from participation unless his own current actions indicate that he is unwilling or unable to abide by the provisions of this Act, appropriate regulations, and appropriate lease terms, which describe due diligence.

In addition, it is intended that in joint ventures, innocent parties would not be punished by the activities of their partners. Subsection (d) specifically authorizes an action for damages, under the procedures of section 23(b) of this Act, against responsible partners by blameless ones.

Limitation on transfer

The 1953 OCS law does not specifically provide conditions or terms for the transfer, by sale or otherwise, of a lease. Interior Department

regulations do specifically provide for Department approval of any assignments or transfers, but do not provide for any further governmental input. 43 C.F.R. 3305.1 to 3305.4.

The committee was aware that statutory law provides for the approval of the Secretary of Interior for assignment or transfer of any on-shore federal mineral lease 30 U.S.C. 184. The committee, therefore, adopted a statutory requirement that off-shore lease assignment or transfer also be subject to approval by the Secretary.

In addition, subsection (d) would allow renegotiation prior to approval of any transfer or assignment. Such renegotiation would be, of course, only if appropriate in the public interest. As these assignments, transfers, or exchanges could be procedures to avoid or lessen the impact of competitive procedures under this Act, such renegotiation or disapproval power might be essential to insure adequate competition. As with other issues or rules or decisions affecting competition under the 1977 amendments, the Secretary is directed to consult with and consider the views of the Attorney General and the Federal Trade Commission as to approvals of transfers or assignments.

Federal-State overlapping jurisdiction-common pools or traps

Subsection (f) is intended to establish a procedure for the orderly and efficient leasing and development of Federal Outer Continental Shelf lands contiguous with state tidelands. While the issue of jurisdiction over offshore lands has been resolved by the U.S. Supreme Court in *United States* v. *Maine*, 420 U.S. 515, 95 S. Ct. 1155 (1975), the problem of drainage of state resources by a lessee operating on the Outer Continental Shelf has not been so resolved.

Subsection (f) provides that, at the same time he solicits nominations for the leasing of lands within 3 miles of the seaward boundary of the coastal State, the Secretary is to notify the Governor of that coastal State of the areas to be offered for leasing, characteristics of the region, the best estimate of the amount of reserves in the areas proposed for leasing, and the existence of any fields or geological structures or traps in that area, but that overlap State tidelands.

Specifically, under this provision, the Secretary of the Interior must supply "all information," about the characteristics of the adjacent zone. This information would not be of an unlimited scope, but rather would be limited to the geographical, geological, and ecological characteristics deemed relevant and important in an evaluation by the coastal states as to agreeing to special arrangements as to a lease.

The requirement that "all information" be supplied must be read in light of section 26, requiring regulations as to confidential or privileged information. Regulations as to confidentiality, to be prepared pursuant to section 26, should require that the Secretary make a preliminary determination, as promptly as possible and certainly no later than immediately after soliciting nominations for an area, as to whether a proposed Federal lease area contains a field or geological structure or trap that extends into State tidelands. Only if the existence of such a common formation is so determined, all information, including otherwise confidential or privileged data, is to be made accessible to the Governor or his designated representative. Knowledge so obtained would be subject, under section 26, to applicable Federal confidentiality provisions. Individuals securing permits, or other

authorization, to conduct pre-lease studies would, through these regulations, be aware of this limited pre-lease availability. Thus, a Governor would have the same information available as the Federal Government, and private survey and exploration firms would be assured of confidentiality.

If the Secretary of the Interior believes that an area nominated for leasing contains a field, structure or trap which may be located both within Federal and State-owned lands, he is to offer the Governor of the appropriate coastal State the opportunity to enter an agreement, prior to the lease sale, as to the disposition of revenues from that lease.

The Governor then has 90 days to determine whether he wishes to participate. If the Governor declines the offer, the Secretary may lease the area. If the Governor accepts the offer, the Secretary and the Governor are to meet to work out mutually acceptable terms of a lease. As this is a lease authorized under the OCS Act, it, of course, must be consistent with the provisions of the Act and applicable regulations. Additional terms should be included in the lease, to the maximum extent practicable and, so as to comply with State law, so long as they cannot reasonably be said to be inconsistent with Federal law. If mutually acceptable terms of a lease are agreed upon by the Secretary and the Governor, the Secretary will then, under those terms, offer such area for lease. If, after a reasonable period of time, such mutually acceptable terms are not able to be agreed upon, the Secretary of the Interior may lease the area, as with any other lease area.

This special lease procedure does not introduce arbitrary delays. The natural time-lags which exist between the calling for nominations, the receipt of nominations, and the acceptances of bids, are utilized as the period for information to be supplied to the State, an offer to be made by the Secretary of the Interior to the State, and mutually acceptable terms to be negotiated.

If there is no special lease under this subsection, or if a special lease does not contain a term specifically dividing proceeds from a lease, all Federal revenues from the Federal lease are to be placed in a separate account until the Secretary of the Interior and the Governor of the coastal State determine the proper rate of payments to be deposited in their respective treasuries, based on geological or other information. If, after a reasonable period of time after production has commenced, the Secretary and the Governor are not able to make such a determination, under section 23(b), the controversy as to the rights to natural resources would be decided by the appropriate district court.

Section 206.—Outer Continental Shelf Oil and Gas Exploration

Section 206 amends section 11 of the OCS Act, providing for the procedures for exploration of areas on the Outer Continental Shelf.

Under the original Outer Continental Shelf Lands Act of 1953, any agency of the United States and any person authorized by the Secretary could conduct geological and geophysical explorations. The committee believes, as indicated by most witnesses and the Department of the Interior, that this provision grants clear authority to allow any type of exploration before a lease sale including private exploration, or public exploration, directly or by contract. The committee decided not to alter this broad grant of authority nor to indicate a preference

for one exploration strategy over another, except for requiring applicants to be sought for an on-structure stratigraphic test, described in subsection (g). Therefore, it readopted, in subsection (a)(1), substantially the original language of the 1953 Act by providing that the Secretary or any other agency or any person whom the Secretary authorizes by permit or through regulation may conduct geological and geophysical exploration in the Outer Continental Shelf, provided such explorations do not interfere with operations in any leased area, and are not unduly harmful to the marine environment.

The committee recognized that the Secretary of the Interior has not yet authorized Government exploration on OCS lands, either by his own employees or by contracted service personnel. However, it is believed, based on the testimony of the Interior Department, that this Section would allow the present Secretary, or any future Secretary, to conduct or authorize such exploration activities as he deemed proper.

Section 11, adds a requirement for all holders of leases issued or maintained under this Act to submit an exploration plan to the Secretary for approval prior to exploring a leased area. Such plan may apply to more than one lease held by a lessee in a region or to more than one lessee, where there is a unitization, pooling or drilling agreement. Any lessee conducting activities on their own leased area must do so in accordance with an approved exploration plan and is exempted from the permit or regulatory authorization procedures and limitations of subsection (a)(1). However, the Secretary is given the authority to require a lessee, by regulation, to obtain a permit before drilling any well, despite having approved the exploration plan.

Subsection (c) describes the contents of an exploration plan and the procedures for approval or modification of that plan. An exploration plan is to include: (1) A schedule of anticipated activities; (2) a description of equipment to be used; (3) the general location of each well to be drilled; and (4) other information deemed pertinent by the Secretary. In addition, the Secretary can, by regulation, require a lessee to submit a statement as to expected on-shore impact of exploration activities and his development and production intentions. Such statement shall be for planning purposes only, and shall not be binding on any party.

After submission of the plan, the Secretary has 30 days to act upon it. If he finds it consistent with the law, regulations and the lease, he may approve it. If he finds modifications are necessary to achieve such consistency, he is to require such modification. If he believes the plan, even if modified, would not insure safe operations he can delay action upon the plan and suspend activities, but only pursuant to and under the circumstances permitted by regulations provided for such environmental suspensions under amended section 5(a)(1) of the OCS Act. Of course, such suspension may be temporary or, where appropriate, lead to cancellation pursuant to the procedures established by section 5(a)(2) of the 1977 OCS Act.

After submission and approval of his plan, the lessee may request revisions, which would then be subject to the same approval procedures as his original plan.

The requirement of approval of a plan prior to any exploration applies to all leases issued after the date of enactment of the 1977 amend-

ments and all leases issued prior to the date of enactment where drilling permits were not issued prior to such date. For such leases, the lessee has 90 days after enactment to submit an exploration plan for approval. The committee is aware that the Interior Department has already promulgated regulations requiring the preparation and submission of exploration plans, and submission of certain planning information to States (30 CFR 250.34(a)). These plans, if approved by the Department of the Interior, can easily be revised to bring them into conformity with the requirements of the 1977 amendments.

The requirement of approval of exploration plan, as detailed in this section, does not apply to lessees who have acquired a drilling permit prior to enactment of the 1977 amendments. As noted earlier, many lessees have submitted exploration plans in accordance with regulatory requirements. These lessees shall be considered in compliance with the requirements of this revised section. If no exploration plan is in existence, a lessee with a drilling permit will still be considered in compliance with this Act but may be required to describe his activities in a plan and submit a planning statement.

The Secretary retains his right on all leases to require revisions of a plan and to establish additional requirements over time. However, as detailed in the analysis of the Secretary's general regulatory responsibility under section 5(a), any retrospective regulation must be reasonable and any new requirements that would cause undue delay must be justified in a finding.

Pre-lease drilling

Subsections (g) and (h) describe procedures for authorizing prelease exploration by permit. Subsection (g) specifically authorizes the Secretary to permit such pre-lease drilling in areas believed to contain significant hydrocarbon accumulations. Whether an area contains such accumulations may be determined by the Secretary or by an applicant for a permit. Such drilling would be done only on the basis of voluntary participation by industry and specifically at no cost to the Government.

The pre-lease exploratory drilling program contemplated by this subsection is patterned after the existing Continental Off-shore Stratigraphic Test ("COST") program. Under that program, the Interior Department has granted permits to consortiums of oil companies to drill deep stratigraphic test wells in frontier areas prior to leasing. Participating companies and the Interior Department have the exclusive right to information obtained from the testing.

Permits have been granted for COST drilling in the Gulf of Mexico, Southern California and Gulf of Alaska, as well as in the Baltimore Canyon Trough Georges Banks and South Atlantic, regions of the Atlantic OCS.

The program has met with widespread industry support and acceptance, as evidenced by the fact that 31 oil companies shared the estimated $9 million cost of drilling the Baltimore Canyon trough test well.

However, until recently, the Interior Department has followed a policy of allowing COST drilling only in locations where there is the lowest possibility of detecting the presence of oil and gas (off-

structure). In contrast, the new Secretary of the Interior testified before our committee that he intends to offer permits in areas which have "the greatest likelihood of containing significant oil and gas accumulations" (on-structure).

To insure the testing of the value of "on-structure" permits, subsection (3) requires the Secretary to offer such permits at least once during the 2-year period after enactment of the 1977 amendments.

To avoid any delays, the subsection provides a requirement that the Secretary set a specific deadline on the length of time he will offer such permits. Of course, if such permits are offered, and no qualified applicant seeks them, "on-structure drilling" will not occur. Such a result appears unlikely, however. Representatives of some of the middle and smaller oil companies testified and submitted statements that in some areas, such "on-structure drilling" would provide additional information about an area's possible accumulation of hydrocarbons. Two company representatives indicated that they sought "on-structure" permits but their applications were denied because of the previous Interior Department's policy prohibiting such permits.

By providing geological information about the proposed lease area prior to leasing, this program could increase the probability that the public will receive a fair return for the sale of its resources, and decrease the likelihood that industry will expend large sums of bonus bids for lands which turn out to be valueless.

In addition, the program would facilitate entry into OCS activity to smaller, independent oil and gas producers who often presently cannot reasonably assume the risks involved in bonus bidding—paying large cash sums in advance with no assurance of recovery of oil or gas. By providing all bidders participating in the test with sufficient information to make bids which more accurately reflect the value of the tracts to be purchased, this program might lessen some of this risk.

Subsection (h) establishes the requirements for regulations as to the granting of any pre-lease exploration permit, "on" or "off-structure". It is patterned on existing regulations, 43 C.F.R. 251.4.

Section 207.—Annual Report

Section 207 amends section 15 of the Outer Continental Shelf Lands Act to require the Secretary of the Interior to submit an annual report in two parts within 6 months of the end of each fiscal year.

Part One of the annual report would describe the OCS leasing and production program, including an accounting of all moneys, and all activities, a summary of management, supervision and enforcement activities, a list of shut-in and flaring wells, and recommendations to Congress for improvements in management, safety, amount of production, and resolution of any jurisdictional conflicts.

Part 2 of the report, to be prepared after consultation with the Attorney General, is to describe programs and plans for the promotion of competition. The report is to include recommendations and findings by the Attorney General, which are to be considered advisory only and not binding as to any future action or inaction, and plans for implementing recommended administrative changes or proposals for new legislation.

It is to contain an evaluation of the various bidding systems, an explanation for the failure to use any new bidding system, an evaluation of any other bidding system not authorized by the Act, an evaluation of the effectiveness of joint bidding limitations, an evaluation of other measures to encourage entry of new competitors, and an evaluation of measures to increase the supply of oil and gas to independent refiners and distributors.

Section 208.—New Sections of the Outer Continental Shelf Lands Act

Section 208 adds 11 new sections to the Outer Continental Shelf Lands Act.

Section 18.—Leasing Programs

Section 18 establishes a process which will permit the Secretary of the Interior to weigh environmental and other risks against energy potential and other benefits in determining how, when and where oil and gas should be made available from the various Outer Continental Shelf areas to meet national energy needs.

Subsection (a) directs the Secretary of the Interior to prepare, approve and maintain a 5-year leasing program, to review it at least every year, and to revise and reapprove it as appropriate.

The purpose of any program, revision, or reapproval is to implement the policies of the Act to indicate the size, timing, and location of leasing activities for each 5-year period following approval or later reapproval.

Management of the program is to be balanced, considering all the economic, social, and environmental impacts of oil and gas activities. In determining the timing and location of future activities in the various geographic regions, the leasing program should consider the existing characteristics of such regions, the need to share developmental benefits and risks among the various regions, the location of these regions with respect to the needs of the various regional markets, the locations of the regions with respect of other uses of sea and seabed, the interest of developers in a particular area, the availability of sufficient equipment and capital to allow expeditious exploration and development, the environmental nature of the various OCS areas, and any relevant baseline or predictive information.

In addition, the Secretary is to consider the views of affected states as to any relevant law, goals or policies which they have identified specifically and as to the effect of any approved coastal zone management program.

The securing of information to allow evaluation of these factors will not necessarily involve additional recordkeeping by either private persons or the Government. Later subsections provide that the Secretary can purchase from private sources and obtain from public sources, including Federal departments and agencies, any information necessary for use in preparing and revising a program.

Selection and timing of leasing areas should, to the maximum extent possible, maintain a proper balance between the potential of environmental damage, resource discovery, and on-shore adverse impact. Finally, leasing activities, including the scheduling of lease sales and the amount to be included in the lease sales, should assure receipt to the Government of fair market value for our public resources.

The leasing program should display this information for all interested federal, state, and local government officials, the oil and gas industry, and the general public.

Subsection 18(b) requires that the Secretary estimate and include in the program the appropriations and staff required to obtain, analyze, and interpret information; conduct baseline studies and prepare any necessary environmental impact statements (as for example prior to a lease sale); and supervise activities so as to assure due diligence and compliance with this Act, regulations, and the terms of the lease. As the purpose of these estimates is to provide information to the Congress, the States, and the public, the committee intends that these estimates represent the Secretary's best judgment of actual costs rather than a view as to what are appropriate funding levels in a budget.

Subsections (c) and (d) provide for submission, review and promulgation of the leasing program. During the preparation of a proposed leasing program, the Secretary is to solicit suggestions from Governors, local government executives, and interested Federal agencies. Specifically, he is to solicit comments from the Attorney General and the Federal Trade Commission as to the competitive impact of the proposed program and they must report their conclusions to him in a timely fashion. In addition, the Secretary can and ordinarily should solicit comments from any other interested person.

The Secretary has 9 months after the date of enactment of the 1977 amendments to formally submit his proposed leasing program and publish it in the Federal Register. However, prior to such formal submission, he must continue his coordination with interested parties, especially affected States. At least 60 days prior to publication and submission, the Secretary is to transmit a copy of his proposed program to the Governor of each affected State. The Governors are to solicit appropriate comments from the executives of affected local areas. Any comment requesting modification, if timely lodged by the Governor, must be responded to in writing with justifications.

At the time the Secretary publishes the proposed program, he is to submit it to Congress, the Attorney General, Governors, and, through Governors, local executives.

The Attorney General, within 90 days after the date of publication, is to submit comments on the anticipated effects of such program on competition. Such comments, of course, do not bind him to any future action or inaction, but are advisory only. In addition, any State, local government, or other person including energy companies, environmental organizations or Members of Congress, can submit recommendations and comments as to any aspects of the program.

After this 90-day period, the Secretary is to submit to Congress and the President his final leasing program, together with any formal comments received during or after his preparation. At the time of the submission of the Secretary's final program, the Secretary is to indicate why any specific recommendation by the Attorney General, or a State or local government, has not been accepted. The program does not become effective until 60 days after this submission.

It is intended by the committee that reasonable recommendations by the Attorney General, or by a State or local government, are to be accepted. If, however, the Secretary has valid reasons not to accept

them, he may reject the request by explaining those reasons, subject, of course, to congressional oversight and judicial review.

Congressional oversight is, of course, always involved in the activities of any Federal Government agency. Here, specific information is to be supplied to the Congress at least 60 days prior to adoption of a final leasing program. Congress can, of course, in that period or thereafter, adopt appropriate legislation, or take any other measures, as to that leasing program.

In addition, section 23(c), of this Act provides for judicial review of a leasing program. Any person adversely affected or aggrieved (which could include a Governor of an affected State) by the leasing program can file a petition for review of the Secretary's approval of a program within 60 days to the U.S. Court of Appeals for the District of Columbia. The review before the Court of Appeals is to be made on the basis of the record before the Secretary, including comments and recommendations from the Attorney General and the various State and local governments, and other persons, and the Secretary's responses thereto.

Subsection 18(d)(3), provides that after the leasing program has been approved by the Secretary, or 18 months following enactment of the 1977 amendments, whichever comes first, no OCS lease may be issued unless it is for an area included in the approved leasing program. The committee believes that a 5-year leasing program should be adopted, in accordance with this Act, as quickly as possible. However, the committee also realized that to prepare a program in conformity with this Act might take up to 18 months, and that leasing should continue during this time.

There is intended to be no delay or interruptions in lease sales. During the period of time that the proposed leasing program is being considered and determined, leasing is to continue as heretofore. Once the leasing program is approved, leasing is to continue under that program. If the approved leasing program is under judicial challenge, leasing can continue until judicial review is completed.

Subsection 18(e) provides that the Secretary must review the leasing program every year, and can revise and reapprove the program in the same manner as originally approved. An annual review is to assure that the program fully reflects updated information and changing conditions. Substantial changes in the program may be required some years, and a new program must be prepared at least every five years. However, there may be some years where little or no change is required.

Subsection 18(f), requires the Secretary to establish procedures for receipt and consideration of nomination for areas to be offered for leasing or to be excluded from leasing, for public notice of, and participation in, development of a leasing program, for review by State and local governments, for periodic consultation with these governments, lessees, and representatives of other individuals or organizations involved in activity in the Outer Continental Shelf, including representatives of the fishing and tourist industries, and for coordination of the program with management programs and consistency requirements established pursuant to the Coastal Zone Management Act of 1972. The Secretary presently uses a nomination process. The com-

mittee intends that this form of industry and public participation in a leasing program be continued. In addition, the Secretary has established limited procedures for public participation and consultation in the development and maintenance of a leasing program. The committee intends that this section will require him to strengthen and expand these procedures.

Subsection 18(g), authorizes the Secretary to obtain from public sources or purchase from private sources any surveys, data, reports or other information (including interpretations) which may be necessary to assist him in preparing any environmental impact statement, either for the entire leasing program, if necessary, or for any particular lease sale, and in making other evaluations required by this Act. Confidentiality of all data is to be maintained as in accordance with this Act, appropriate regulations, or agreement between the parties. This confidentiality requirement is designed to allow the Secretary to negotiate for the purchase of data on the basis that it will be kept confidential for as long as the seller wishes. Requiring the public release of all purchased data at any particular time would tend to lead data owners to refuse to sell the data to the Secretary. This provision allows the Secretary and the owner of the information to work out a mutually acceptable arrangement.

Subsection 18(h), directs the heads of all Federal departments or agencies to provide the Secretary with any non-proprietary information he requests to assist him in preparing a leasing program, and allows them to provide other information to the Secretary. In addition, the Secretary is to use the existing resources of Federal departments and agencies wherever possible.

The intent of subsections 18(g) and (h), is that the Secretary obtain all necessary information from all reasonable sources, but avoid duplication of data collection efforts wherever possible.

Section 19.—Coordination and Consultation with Affected States and Local Governments

This section is intended to insure that Governors of affected States, and local government executives within such States, have a leading role in OCS decisions and particularly as to potential lease sales and development and production plans. In addition, it is intended to provide a mechanism for involvement of Governors and local Government officials.

Effect of recommendations

Comments from State and local executives are to be generally solicited by the Secretary of the Interior and specific recommendations requested as to lease sales and development and production plans. The Governor must submit his recommendations as to a lease sale within sixty (60) days, and as to a development and production plan within ninety (90) days. The Secretary shall accept a Governor's recommendation (and may accept a local executive's recommendation) [61] if he determines that the recommendations provide for a reasonable balance between the national interest and State and local needs. Any rejection

[61] Whether or not recommendations are made by a local government executive to the Secretary, the committee expects that Governors of affected states would consult with representatives of affected local governments and should forward their views, when appropriate, as part of their formal recommendations.

of a recommendation can only come after direct consultation with the Governor, or where appropriate the local executive, and must be formally communicated in writing, with reasons.

The Committee did not believe that any State should have a veto power over OCS oil and gas activities. The committee fully expects, however, that the advice of the Governor be given full and careful consideration, and be incorporated into the ultimate decision of the Secretary, insofar as they are not inconsistent with the balanced approach to OCS leasing set out in this Act. It is also expected that any recommendations made by a Governor, and the reasons for rejection of such recommendations, will be part of the record of any judicial proceeding as to a lease sale, provided for in the citizens' suit subsection 23(a) or for review of a development and production plan, provided for in the judicial review subsection 23(c). Rejection of any specific recommendation shall not, alone, be a basis for invalidation by a court, unless of course, the rejection was an abuse of discretion and thus, as with any other administrative action, invalid as arbitrary or capricious. However, weight can and should be attached to the recommendations, and the reasons for rejection, as part of the total record before the court.[52]

Interstate and Federal-State coordination

One of the main purposes of the 1977 amendments is to provide for coordinated OCS action. One concern raised at the hearings was the need for regional, rather than State by State, action as to OCS activities. The committee decided not to establish any new formal mechanism for regional bodies.[53] Governors, of course, are free to establish whatever advisory or consultative mechanisms they deem useful and necessary. The Secretary of the Interior has already established certain regional advisory boards, consisting of representatives from States and various Federal agencies. The committee expects these arrangements to continue and be improved. In addition, under the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.) coastal States are encouraged to coordinate planning, policies, and programs, pursuant to informal agreements or, if desired, pursuant to formal interstate agreements or compacts, and funds are authorized for such activities. The CZMA also provides for mandated consultation procedures, advice, and Government agency involvement with any formal or informal interstate body.

Finally, subsection 19(e) does provide a coordination mechanism between Federal and State bodies. Explicit authority is granted for cooperative agreements between the Secretary and affected States for, among other things, information sharing, expert advice, planning, and joint permitting and enforcement.

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[52] The committee is aware that under the Coastal Zone Management Act of 1972, as amended in 1976 (16 U.S.C. 1451 et seq.), certain OCS activties including lease sales and approval of development and production plans must comply with "consistency" requirements as to coastal zone management plans approved by the Secretary of Commerce. Except for specific changes made by Titles IV and V of the 1977 Amendments, nothing in this Act is intended to amend, modify or repeal any provision of the Coastal Zone Management Act. Specifically, nothing is intended to alter procedures under that Act for consistency once a State has an approved Coastal Zone Management Plan.

[53] A provision authorizing the Governors of States to be affected by OCS activities to establish regional boards was included in OCS bills passed by both Houses during the 94th Congress. The Coastal Zone Management Act of 1976 (Public Law 94-370), described above, was passed after this action.

Section 20.—Baseline and Monitoring Studies

Section 20 provides a mechanism by which information concerning the environment in an area to be leased and then developed is to be analyzed and then used as a basis to monitor effects. Subsection 20(a) provides that if any area or region is to be included in a lease sale, a study is to be undertaken to establish baseline information concerning the status of the environment of the Shelf area involved and of the coastal areas which may be affected by exploration, development and production in that area. The study is to be conducted by the Secretary of the Interior. Because of the experience and the expertise on ocean matters of the National Oceanic and Atmospheric Administration, and the undertaking of more than half of the OCS environmental studies by that Administration to this date, the Secretary of the Interior is, however, under subsection (e), directed to utilize NOAA, to the maximum extent practicable, through appropriate arrangements with the Department of Commerce.

The committee understands that there is a great deal of controversy as to what is or what is not a "baseline study". The Act only mandates that the information collected is to determine baselines.

The determination of what is or is not a "baseline" is not static. Therefore, a study to be submitted by the Secretary will not necessarily be a "baseline study", but will rather be a study collecting a baseline of information to be of use to those people conducting, administering and reviewing activities on the Shelf. The Secretary is given the discretion to determine what information is necessary to make any necessary reports. It may be a "baseline" or any other method of environmental investigation.

In designing these studies, the Secretary, to the extent practicable, is to attempt to have the studies predict impacts on marine biota from low-level pollution or large spills associated with activities on the Outer Continental Shelf, and from drilling and the laying of pipelines. In addition, the studies should predict the impact of off-shore activities on affected on-shore areas.

In order to assure the prompt commencement and completion of these studies, subsection 20(a) mandates that if no such study has already been commenced, it must be commenced within six months from the date of enactment of the 1977 amendments for any area or region where a lease sale has already been held or firmly scheduled, and in the future, is to be commenced in any area at least 6 months prior to the holding of a lease sale in such area. In those areas where studies have already commenced, the Secretary can utilize information already collected.

It is expected that ordinarily the Secretary should complete a study prior to the commencement of production in a lease area. Ordinarily, the Secretary will therefore, have 4 to 6 years to prepare his study while exploration is being undertaken in a lease area. As the information to be obtained from such a study would be of great value to the Secretary in evaluating a development and production plan, the Secretary should coordinate his studies with the activities of a lessee or permittee in a lease area so as to be able to compile at least some of the useful environmental information prior to development and production.

Subsection 20(b) is intended to provide for continued study and monitoring of an area. As the Secretary is encouraged to compile environmental information in a study for use in considering a development and production plan, and as such a study might not completely collect all necessary information, especially if there are recent environmental, economic or recreational changes, additional studies might be appropriate. The Secretary is permitted, therefore, after completion of his first study, to conduct additional studies to establish baseline information as he deems necessary. In addition, he is to monitor the production area in a manner designed to provide time series data which can be compared with earlier studies and previously collected data summarized in those studies for the purpose of identifying any significant changes and the possible cause of such changes.

Subsection 20(c) requires implementing regulations and procedures to be promulgated and calls for cooperation with the States in planning and carrying out studies and monitoring, including issuance of contracts to appropriate State agencies and universities. Although the Secretary of the Interior is given responsibility for conducting such studies, the committee recognized that other Federal, State, and local agencies have been collecting information to prepare environmental impact statements, as to human, marine or coastal environments. The committee wishes the studies, mandated by this section, to be cooperative efforts by all Federal and State government agencies with the capability to undertake such studies. Information already collected should be used by the Secretary so as to avoid redundant studies, or to supplement or reduce the scope of any new study.

Subsection 20(d) provides that the Secretary is to submit to Congress and to make available to the public an assessment of the cumulative effects of OCS activities on the environment of the various regions affected.

Finally, the committee made it explicit that information prepared pursuant to this section should be adequately considered by the Secretary. In making decisions, promulgating regulations, setting lease terms, and establishing operating procedures, he is to review, analyze and consider all available and relevant environmental information prepared pursuant to this section.

Section 21.—Safety Regulations

Section 21 establishes procedures for study, review, coordination, and if necessary, revision of safety regulations in light of the policy of the 1977 amendments related to the need for safe operations on the Outer Continental Shelf. Specifically, the 1977 amendments, paragraph (6) of Section 3 of the OCS Act make it an explicit policy that:

> "(6) operations in the Outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blow-outs, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health."

Safety regulation and enforcement should be in accord with this policy.

Preparation of a study

Subsection 21(a) provides for a study of the adequacy of existing safety regulations for the OCS, and of the technology, equipment, and techniques available for OCS activities. Such study shall be submitted to the President who shall then submit a plan for the promotion of safety and health to the Congress. Congress will then have an opportunity, through appropriate oversight, or if necessary, further legislation, to insure that adequate provision is provided for safe OCS operations.

Responsibility for regulations and coordination

The committee is aware of the numerous Federal agencies and departments presently involved in OCS safety regulations and enforcement. As with all other OCS activities and decisions, it is the intention of the committee to limit, and hopefully eliminate, any "bureaucratic nightmare" of uncoordinated governmental action. Thus, the study required by subsection (a) is to be done "in consultation with" appropriate agency heads. Thus the safety plan forwarded to Congress will cover areas administered by all appropriate agencies. In addition, subsection 21(e) provides a mechanism to avoid too numerous or overlapping safety regulations. The Secretary is to consult with and coordinate the activities of all relevant Federal agencies. In effect, he is to act as a "clearinghouse" to assure, to the maximum extent practicable, that inconsistent or duplicative requirements are not imposed.

In addition, subsection 21(e) seeks to provide easy access to OCS regulations, whether prepared by the Secretary of Interior or other agencies. Thus, the Secretary of the Interior is required to prepare an annual compilation of all regulations, as prepared by all agencies, applicable to activities on the Shelf and to make such compilation available to lessees, permittees, subcontractors, sublessees, workers, or any other interested person.

The committee was aware of the present major safety-related regulatory responsibilities of the U.S. Geological Survey, within the Interior Department, of the Coast Guard and Office of Pipeline Safety within the Department of Transportation, and the Occupational Safety and Health Administration within the Department of Labor.

Subsections 4(e) and 4(f) of the OCS Act of 1953, as readopted by the 1977 amendments, provide that the Secretary of the Department in which the Coast Guard is operating shall promulgate and enforce reasonable regulations as to safety of life and property and that the Secretary of the Army is to continue to have the authority to prevent obstruction to navigation in navigable waters. Except for the preparation and enforcement of regulations as to workers' safety described below, nothing in section 21 eliminates or lessens these responsibilities.

The committee is aware of the role of the U.S. Coast Guard in regard to vessel safety, including provisions to protect employees. The Coast Guard has developed a program beginning at the design stage and continuing through construction and operation of a vessel. This

program currently covers mobile drilling units and support vessels engaged in operations on the shelf.

The committee recognized that these mobile drilling units and vessels are not restricted to operations on the shelf but are commonly employed worldwide. Adequate regulations to be promulgated and enforced should not only apply to such vessels when they are mobile but also when they are actually drilling, and therefore, attached to the seabed. In order to avoid conflict and ambiguities, the committee expects the Coast Guard to work with other responsible agencies so as to provide that drill ships or other mobile vessels would not only comply with Coast Guard regulations while traveling, but also comply with other appropriate regulations, when in the drilling mode.

The Natural Gas Pipeline Safety Act assigns to the Secretary of Transportation primary responsibility for establishing minimum Federal safety standards for the transportation of gas and pipeline facilities as defined in that Act. These standards may apply to the design, installation, inspection, testing, construction extension, operation, replacement, and maintenance of those pipeline facilities. The committee reviewed the Report on Safety Standards and Pipelines on Federal Lands and the Outer Continental Shelf which was submitted by the Secretary of Transportation. The committee fully expects the Secretary of Transportation to exercise his existing authority on the shelf and on lands beneath navigable waters within State boundaries and to continue to issue and enforce regulations for off-shore pipelines. As discussed earlier in relation to "rights-of-way" under section 4 of this Act and as specifically indicated by subsection (d), this section is not intended to diminish or duplicate any authority of the Secretary of Transportation, presently provided by law, to establish and enforce such pipeline safety standards and regulations in the Outer Continental Shelf. The committee understands that a memorandum of understanding has now been established between the Department of Transportation and the Department of the Interior as to pipeline safety standards and regulations. Nothing in this section is intended to supersede that memorandum of understanding.

The committee determined that special provision should be made as to worker's safety regulation and enforcement on the OCS. Section 4(e) of the OCS Act of 1953 provided that the Coast Guard had the responsibility for the safety of any person, which would include occupational safety on OCS facilities and in adjacent waters.

The Occupational Safety and Health Act (24 U.S.C. 651) provides authority for the Secretary of Labor, through the Occupational Safety and Health Administration, to prepare interim worker's safety regulations and standards and, unless ousted by another agency or department, permanent standards, for all areas including the Shelf.

The committee is aware of a continuing controversy as to whether OSHA or the Coast Guard should exercise regulatory authority over OCS worker's safety and health.

Some witnesses suggested that OSHA, within the Department of Labor, be given sole responsibility, or at least lead agency authority

as to worker's safety. Others opposed any agency other than Coast Guard being involved.

Representatives of Coast Guard and OSHA detailed to the committee their cooperative efforts to promulgate and enforce worker's safety rules. For example, Coast Guard and OSHA have recently worked together to prepare final standards on commercial diving operations, applicable to OCS and non-OCS activities. 41 Fed. Reg. 37650–37674 (July 22, 1977). These standards were formally promulgated by the Department of Labor.

As a practical matter, both OSHA and the Coast Guard will continue to function on the OCS. OSHA has prepared not only divers standards but also numerous general industry and construction standards currently in force in the OCS. OSHA and the Coast Guard have each trained diving inspectors. OSHA will maintain responsibility for health standards, even if final safety standards are promulgated by Coast Guard. OSHA administers a compresensive health and safety law which establishes a "general duty" to maintain a safe place of work and there is no corresponding responsibility under Coast Guard enabling legislation. OSHA will always be in the position of filling in the gaps in the regulatory effort of the Coast Guard.

Subsection (c)(2) intended to avoid possible interagency conflict and duplication of effort. Specifically, by overruling the "ousting language" of the Occupational Safety and Health Act, OSHA and Coast Guard are to coordinate activity to prepare and enforce regulations so as to avoid duplication and maximize employee protection. Without such a provision, duplication and conflict might occur.

For example as to diving operations, Coast Guard could by existing law regulate safety and OSHA health; yet as a practical matter, in the field, health and safety often merge in a single operation. Similarly under existing law, Coast Guard would protect the safety of divers below the surface and OSHA protect the deck crew.

The committee believed that the best way to resolve this problem is not the status quo which has led to confusion, litigation and employee resistance. Rather it is to give clear direction to the administration to develop interagency cooperative arrangements and resolve all jurisdictional conflicts. Thus, this subsection was included, not giving lead agency responsibility to OSHA, not infringing on Coast Guard jurisdiction, but providing authority for both to work together.

Regulations for hazardous working conditions

At its hearings, the committee learned of a particular problem concerning the safety of divers in the waters above the Outer Continental Shelf. Until very recently, there were no regulations or standards applying to such diving activities. Although as discussed above, diver standards have now been promulgated, the committee is concerned that there might be other areas involving safety that are unregulated. Paragraph 1 of subsection (c) of this section requires that within 60 days after enactment of the 1977 amendments, interim regulations are to be prepared by the Secretary of Labor, pursuant to the Occupational Safety and Health Act, as to unregulated hazardous working conditions on the Shelf. It is the intention of the committee that the Secretary of Labor use the Occupational Safety and Health Adminis-

tration, and its Administrator, within his Department, to promulgate such regulations, and that the Administrator consult with the Secretary of the Interior, and the Coast Guard, in developing such regulations. These regulations are to remain in effect until final ones are promulgated, but, of course, can be modified from time to time as necessary.

Best technology required

The committee, during its visits to off-shore facilities, was impressed by the continuing ability of industry and others to develop newer and safer equipment. Subsection (b) mandates that regulations under this section are to require if practicable, such updated equipment. Therefore, on all new drilling and production operations, the best available and safest technology economically achievable is to be required. Because of the impracticability of requiring the newest equipment on existing facilities, the best available and safest technology is to be required on existing operations wherever practicable. A balancing of danger and costs is required. The focus of this provision is to require that operations in the Outer Continental Shelf on leases are to be the safest possible. The regulator is to balance the significance of the procedure or piece of equipment on safety. If adoption of new techniques or equipment would significantly increase safety, and would not be an undue economic hardship on the lessee or permittee, he is to require it. In determining whether an undue economic hardship is involved, the regulator is to weigh incremental benefits against incremental costs. If the incremental benefits are clearly insufficient when compared to the incremental costs, the new technique, procedure or equipment is not to be required. Finally, the committee is aware that there may be several technologies as to a particular activity. In applying the "best available and safest" standard, the regulator is to evaluate the several options, and more than one might be appropriate. "Best" and "safest", in other words, apply to the technology and may include several alternative techniques, pieces of equipment or practices—any of which might be acceptable.

Section 22.—Enforcement

This section is intended to provide mechanisms and procedures for the enforcement of regulations issued pursuant to the provisions of this Act. Failure to comply with any provision of the Act, any implementing regulation, or terms of a lease or permit included because of the Act or regulations, would subject the violators to civil or criminal penalties under section 24 of the 1977 amendments.

Subsection 22(a) requires strict enforcement of OCS safety and environmental regulations. In addition, in accord with the committee's desire, indicated throughout the 1977 amendments, to provide for coordinated activity, this subsection authorizes services, personnel, and facilities of any agency with enforcement authority to be used by any other agency with such authority in a cooperative joint manner—so as to avoid costly duplication.

To provide for strict enforcement, subsection 22(b) provides that lessees or permittees are to allow access to any inspector promptly, and to provide any requested documents and records that are pertinent to occupational and public health, safety, or environmental protection.

In addition, compliance with the Act, applicable regulations, and the terms of the lease, is required by all those responsible for actual operations. Thus, a lessee or permittee is also made responsible for the maintenance of safeguards for all employees, including those of any employee, contractor, or subcontractor utilized by the lessee or permittee.

To insure regular inspection, regulations are to be promulgated by the Secretary of the Interior, and the Secretary of the Department in which the Coast Guard is operating, either individually or jointly if they so agree, to provide for at least annual physical observation of all installations, testing of all safety equipment and surprise visits at least once a year.

Investigations

The committee was concerned with the lack of information concerning accidents as a result of activities on the Outer Continental Shelf. While presently the Interior and the Coast Guard have the authority and responsibility to investigate all such accidents, whether or not they result in the loss of life, this permissive authority was not, in the committee's opinion, adequately implemented. Subsection (d)(1) requires the Secretary of Interior or the Coast Guard to investigate and make a public report on every major fire and major oil spill occurring as a result of operations conducted pursuant to this Act. In addition, the Secretary of Interior or the Secretary of Labor, through his Occupational Safety and Health Administrator, is to make an investigation or report on any death or serious injury occurring as a result of operations conducted pursuant to this Act. These agencies are also given permission to investigate any other accident.

As it is possible, and perhaps even probable that a major fire or major oil spill might also involve serious bodily injury or death, there may be instances where more than one agency under this Act or other acts will seek to conduct investigations. It is the intention of the committee that the responsible agencies will act in a cooperative and joint fashion. Specifically, the agencies may utilize the services, personnel and facilities of each other, or of any other Federal agency.

Subsection 22(e) requires that the Secretary of the Interior or as to worker's safety and health, the Secretary of Labor (intended to be operating through the Occupational Safety and Health Administration), consider any allegation of any person of the existence of a violation of any safety regulations and respond to such allegation within 90 days, stating whether or not such alleged violation exists, and if so, what action has been or will be taken. Full authority to conduct such an investigation is granted, with the power to summon witnesses, and to require production of evidence. Under subsection 22(g), a report on the allegations is to be included by the Secretary of the Interior in his annual report.

These provisions are designed to allow any interested person, including a union official, a subcontractor or lawyer, or a local or State governmental official, who believes safety regulations are being violated, to trigger an investigation. In most cases, this form of involvement would be more effective than, and hopefully eliminate the need for, legal action.

Section 23.—Citizens' Suits, Court Jurisdiction, and Judicial Review

Section 23 details the procedures by which citizens, including lessees, or permittees, employees, local and state governmental officials, and others, can participate in the enforcement of the Act. Review of certain types of actions are through administrative proceedings, followed by an appeal in a court of appeals. Review of other actions are by suits in a district court.

Citizens suits

Subsection 23(a) provides for citizens' suits against any person including any governmental agency (including the Department of Interior or other agencies or departments with regulatory or enforcement authority as to OCS activities), alleged to be in violation of the Act, applicable regulations, or the terms of any lease or permit issued under the Act.

This subsection provides that suits may be brought by "any person having a valid legal interest which is or may be adversely affected." Thus, the scope of persons who can sue are those who can show an actual interest that is being negatively affected, or will be negatively affected at a reasonable time in the future. The interest must be discernible and ascertainable. Standing to sue includes not only those who have an economic interest, or who have suffered or will probably suffer a tortuous injury, but also those who may have a definable aesthetic or environmental interest. Specifically, the Committee intends that this includes persons who meet the requirement for standing to sue set out by the Supreme Court in *Sierra Club* v. *Morton*, 405 U.S. 727 (1972).

No such citizens suit action may be commenced until 60 days after written notice, under oath, of the alleged violation to the alleged violator, to the Secretary and any other appropriate Federal official and to the State where the alleged violation occurred.

If the Secretary or other official, or the Attorney General, begins and diligently prosecutes an action against the violator, no court action could take place on the citizen's suit, but the complainant would have the right to intervene. This 60-day waiting period does not apply when the violation of failure to act involves an imminent threat to the public health or safety or would immediately affect the legal interest of the plaintiff. If any action is commenced by a citizen, pursuant to this section, the Secretary, any other appropriate Federal official, or the Attorney General, if not already a party, can intervene as a matter of right on either side.

This provision for notice, and a waiting period, is designed to give the Secretary or any other appropriate Federal official, the Attorney General, and the alleged violator, an opportunity to promptly stop any violation, and thus limit, or eliminate the need for any court action.

As detailed in paragraph (6) of subsection 23(a), this citizen suits provision ordinarily provides the exclusive method to challenge OCS decisions, enforcement or violations. Legal remedies or relief under any other act or the common law would not be affected. Thus, any statutory procedure or remedy provided in other Federal statutes, such as the National Environmental Policy Act, the Deepwater Ports Act, the Clean Air Act, or the Fish and Wildlife Act, or under an applicable State law are not precluded.

Of course, it is possible that an act or activity is alleged to be a violation of this Act or another. A challenge as to the act or activity could then be brought either under this statute or the other appropriate statute or both. It is intended, however, that this section, patterned on provisions in most other related statutes, would lead to a unitary court action—where all challenges are raised, under one or more statutes. Thus, for example, a challenge to a lease sale decision would be brought under this subsection. A challenge as to alleged violations of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) in the setting of that lease sale could be brought under this subsection or under the applicable procedures of N.E.P.A. One court action could, under this section, deal with both claims.

The only exception to the application of this subsection is detailed in subsection (c). Under that subsection, the establishment of a leasing program, or the approval, modification, or disapproval of an exploration plan or of a development and production plan, are to be litigated in administrative proceedings and then reviewed in a court of appeals. They would not be subject to citizens' suits in a district court under subsection (a).

Jurisdiction

Subsection 23(b) reincorporates the jurisdictional provisions previously found in section 4(b) of the OCS Lands Act of 1953. Citizens' suits, or other cases or controversies arising out of any activity conducted on the Shelf, including cancellation, suspension or termination of a lease or permit, or the rights to natural resources (as, for example, between the State and the Federal Government), are to be brought to the U.S. district court in which the defendant resides or can be found, or in a judicial district of the state nearest to the place at which the controversy arose. Whether the proceeding is for an original hearing as in the case of a dispute between the state and federal government over resources, under subsection 8(b), or for appellate-like review, as in the case of an environmental cancellation, is determined by the nature of the case or controversy and the provisions of this Act.

Judicial review

Subsection 23(c) provides a different procedure for challenges to certain kinds of decisions by the Secretary of the Interior. Review of a leasing program, an exploration plan, or a development and production plan, can be based on the written document itself. Moreover, specific mandates are given to the Secretary of the Interior to make proposals or drafts of these documents available and to consider the opinions of affected persons. Thus, unlike a lease sale determination covered by the citizens' suit provision, if appropriate administrative proceedings are undertaken, there is a less of a need to create a record at a trial court, and thus review in a court of appeals would not only be sufficient, but also appropriate, as being able to reduce litigation.

Any person "adversely affected or aggrieved" by action on the program or plans, as that term is described in the discussion on subsection (a), who has participated in administrative proceedings leading to those actions, can petition for review. The committee noted that review of a leasing program would involve consideration of various regional interests and problems, and a determination as to propriety

of such a program would have to balance the needs and problems of all those regional areas, and of the Federal Government. Therefore, in order to provide for a consolidated review mechanism, review of a leasing program is to be only in the U.S. Court of Appeals for the District of Columbia. Review of an exploration plan or a development and production plan, would be held closer to the area in which the plan was submitted, in the U.S. Court of Appeals for a circuit in which an affected State is located.

A petitioner must seek review within 60 days after the date of the challenged action, and must promptly submit copies of his petition to the Secretary and to the Attorney General.

The court of appeals is to consider the matter upon review of the record made before the Secretary. The Secretary is to file records of any public hearings, and to supply any additional information on which he based his decision.

To insure an opportunity for the Secretary during his administrative procedures to consider and resolve disputes, specific objections to a proposal or plan are to considered by the court of appeals only if the issue upon which such objections are based were raised in the administrative procedures. The findings of the Secretary, if supported by substantial evidence on the record, considered as a whole, shall be conclusive. The court of appeals can affirm, vacate, or modify any order or decision, or can remand proceedings back to the Secretary court of appeals can be subject to review by the Supreme Court of the for further action as it may direct. Of course, the judgment of the United States upon a writ of certiorari.

In order to assure that citizens will have the assistance of effective counsel, the court in issuing any final order in a citizen's suit or judicial review, can award costs of litigation, including reasonable attorney's fees. to a party in an appropriate case. In order to avoid frivolous litigation, the court can require a bond or equivalent security if a temporary restraining order or injuction is sought.

Section 24.—Remedies and Penalties.

Section 24(a) authorizes the Attorney General, or a U.S. attorney, at the request of the Secretary of the Interior,[54] to institute civil actions, including seeking restraining orders or injunctions, to enforce the Act, any Regulation or Order issued under this Act, or any team of a lease, license, or permit issued pursuant to this Act.

Subsection 24(b) provides for a civil penalty to be assessed against any person, who after notice, a reasonable period for corrective action, and a hearing, continues to fail to comply with the Act, any regulation or order under it, or the terms of an OCS lease, license or permit. The maximum penalty is $10,000 per day.

Subsection 24(c) provides criminal penalties for knowing and willful violations of any provision of this Act, any regulation or order issued under the authority of this Act, or the terms of any OCS lease, license, or permit, designed to protect public health, safety, or the environment, or conserve natural resources. There are also criminal

[54] In order to conform this section to other provisions of the bill, to provide for Interior to be a clearinghouse for OCS actions, as the lead agency, requests for enforcement are to be made only by the Secretary of the Interior. Of course, the Secretary is expected to consult other involved agency and department heads and when appropriate, forward their requests for enforcement action, and assess and collect penalties.

penalties for any person who knowingly and willfully makes any false statement, representation, or certification in any application, record, report or plan or other document filed or required to be maintained under this Act; who knowingly and willfully falsifies, tampers with or renders inaccurate any monitoring device or record required to be under this Act; who knowingly and willfully falsifies, tampers with any data or information required to be kept confidential by this Act.

The criminal penalty is a fine of not more than $100,000, or imprisonment for not more than 10 years, or both. However, each day that a person violates a regulation, or each day that a monitoring device remains inoperative or inaccurate, will be considered a separate offense, subject to the maximum fine and penalty.

Subsection 24(d) provides for application of the criminal penalties against corporate officials when the violator is a corporation or other business entity, and the officer or agent knowingly and willfully authorized, ordered or carried out the proscribed activity.

Subsection 24(e) states that the remedies and penalties in this section are to be concurrent with each other, and any other remedies afforded by any other law or regulation.

Section 25.—Oil and Gas Development and Production

Section 25 is intended to provide the mechanism for review and evaluation of, and decision on, development and production in a leased area, after consultation and coordination with all affected parties.

The committee considers this one of the most important provisions of the 1977 amendments. It provides a means to separate the Federal decision to allow private industry to explore for oil and gas from the Federal decision to allow development and production to proceed if the lessee finds oil and gas. The failure to have such a mechanism in the past has led to extensive litigation prior to lease sales, when onshore and environmental impacts of production activity are not yet known. In fact, the failure to have this procedure has led, in part, at least one court to invalidate an entire lease sale.[55]

The Secretary of Interior has publicly stated that he favors the mechanism described in this section and, while hopeful that legislation will be forthcoming, if necessary will implement its provisions under his general regulatory authority. Even before this recent pronouncement by the new Secretary of Interior, the Interior Department recognized the need for affected States, and other interested persons, to receive information and input into development and production decisions, by adopting regulations providing for a lessee to supply a development and production plan to the Secretary of the Interior prior to commencement of development and production. In addition, these new regulations provide for information concerning the expected onshore development as a result of such development and production off-shore to be forwarded to the States. Section 25 seeks to strengthen and enact into law the protections afforded by these regulations, and mandate procedures for the review and approval, disapproval, modification, or revision of development and production plans.

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[55] The Baltimore Canyon Lease Sale No. 40. *County of Suffolk* v. *Secretary of the Interior*, 7 Envt'l L. Rptr 20230 (E.D. N.Y. 1977), *rev'd*, — F. 2d — (2nd Cir. 1977). The Court of Appeals reversed on the assumption that the now Secretary of Interior will keep his commitment to conduct a second review prior to development.

The committee recognized, that in many cases, there is no real separation between exploration and production. Exploration activities, including delineation drilling, can continue in a lease area even after production has commenced. However, the committee also recognized that there is a point in time when the lessee has to make a decision whether or not he is going to order a platform, seek related onshore support facilities, and commence substantial development and production in a lease area. This decision is perhaps, with the exception of the purchase of a lease, the key decision, with the most significant effects, relating to OCS activities. This section utilizes the natural pause that occurs when a lessee determines he is to commence major development as the basis to supply needed information to affected states and other interested persons, and to provide a mechanism for decisions as to continued activity on a lease.

Off-shore plan and on-shore statement

Subsection 25(a) provides that prior to development and production, a lessee is to submit a development and production plan to the Secretary for approval. The plan is to be accompanied by a statement describing facilities and operations other than on the Outer Continental Shelf resulting from activities on the Shelf.

The requirement of submission of a development and production plan for approval, and of the statement for review, does not apply to leases in non-frontier areas unless the Secretary finds a plan is necessary in the public interest, or in any case to existing leases in any area where oil and gas in commercial quantities have been discovered prior to enactment of this section.

As section 25 provides a new mechanism for approval, and disapproval, of activities, the committee believed it inappropriate to apply it to any lease in an area which has undergone substantial activity, such as those in the Gulf of Mexico, where most future leases would be drainage ones in nature, unless specific need is shown, or to apply it to a lease where development and production has already commenced.

The development and production plan, which is subject to the approval of the Secretary, is to describe, to the extent available at the time of its submission, information about the nature and extent of the proposed development, including specific work to be performed, a description of all off-shore facilities and operations directly related to such development, environmental safeguards and safety standards to be implemented, an expected rate of development and production, a time schedule of performance, and other relevant information as the Secretary may require. The plan may apply to more than one lease.

The committee recognizes that there must be flexibility in the degree of detail required in the plan, or in the statement of information. Therefore, that degree of detail is to be established by regulations issued by the Secretary, which of course, are subject to modification and revision.

The information supplied by the lessee is to be his best estimate and should not be open to attack on the basis of reliance, if it is a reasonable attempt to comply and supply the necessary information.

The statement as to on-shore facilties and operations is to describe the nature, extent, and location of facilities to be constructed and utilized in connection with OCS activities, including, transportation, processing or refining, and safety protections to be implemented. This statement can only be in a degree of detail available to the lessee. Therefore, the lessee is only required to describe those facilities and operations which he reasonably should know and which he himself proposes. This statement as to on-shore facilities and operations is not subject to the approval of the Secretary, as the Secretary's responsibility is only as to off-shore operations. Relevant, State, local, regional, or other bodies have, or should have, appropriate procedures and mechanisms to review these proposed activities and grant or deny permission for them to occur.

Within 10 days after receipt of the development and production plan, and the statement of information, the Secretary of the Interior is, with limited exceptions, to submit such plan and statement to the Governor of any affected state and upon request, to the executives of any affected local government and is also to make such plan and statement available to any other interested person. The Secretary may withhold some of the material if it is confidential or privileged information. Under section 26(c)(2), however, the Secretary must make even this confidential information accessible to a Governor, subject, of course, to a requirement that the designated official himself maintain confidentiality. Access to all information is, therefore, provided to any affected State. Copies of privileged information is not to be provided to the State, and access and copies are not to be provided to other interested persons.

Subsection 25(d) and (e) provide for the procedures for review and approval of a development and production plan. Such review can be conducted in two ways—either through procedures established by the National Environmental and Policy Act, applicable to "major Federal actions significantly affecting the quality of the human environment," or through submission of comments and recommendations by interested persons.

Review

The Secretary is to review a development and production plan and declare his findings as to whether approval of the development and production plan is a "major Federal action" requiring a draft environmental impact statement to be prepared, followed by public hearings, and concluded by the preparation of a final environmental impact statement. The committee intends that the provisions of the National Environmental Policy Act of 1969 (NEPA) shall apply.

The provisions of this Act determine whether any particular activity is a "major Federal action" requiring the appropriate procedures. However, the Secretary is instructed by the 1977 Act that at least once prior to major development being authorized in any frontier area, the NEPA procedures involving environmental impact statements and a hearing are to be applied. It may be possible, of course, that approval of a later plan in an area may also be a "major Federal action" under the National Environmental Policy Act. The mandate of at least one set of environmental impact statements and hearings does

not in any way limit the applicability of NEPA to later approval of later plans.

If development and production pursuant to a plan is found to be a major Federal action, the Secretary may require lessees on adjacent or nearby leases to submit preliminary or final plans for their leases, for consideration and review at the same time as consideration and review of the submitted plan. The Secretary is to transmit the draft environmental impact statement to the Governor of any affected State, and the executive of any local government or area, and is to make such draft available to the public.

The Secretary is to conduct the NEPA public hearings, review its record and within 60 days after releasing the final environmental impact statement, approve, disapprove or require modifications of the plan.

The committee feels strongly that the NEPA impact statement process when applicable, should not unnecessarily delay the approval of a development and production plan. Therefore, the committee supports the directive of President Carter to the Chairman of the Council on Environmental Quality, that he promulgate new guidelines designed to expedite the process.

The other review procedure is through comment. If development and production pursuant to a plan is not found to be a major Federal action, the Governor of any affected State, and the executive of any local government agency or local government area, can submit comments and recommendations to the Secretary within 90 days of receipt of the plan from the Secretary. As described in section 19, the Secretary must accept recommendations submitted by any affected Governor, whether under the NEPA procedure or the comment procedure, if he determines they "provide for a responsible balance between the national interest and the well-being of the citizens of the affected State." Such comments and recommendations are to be made available to the public upon request and any interested person can also submit comments and recommendations. Within 60 days after the 90-day period provided for comments and recommendations, the Secretary is to approve, disapprove, or require modifications of a plan.

As detailed in section 23, the action of the Secretary in approving, requiring modifications of, or disapproving any development and production plan, is subject to judicial review in the U.S. Court of Appeals for a circuit in which an affected State is located.

Modifications, revisions, and disapproval

Detailed provisions are provided for modifications, revisions, and disapproval of a plan. The Secretary is to require modifications of a plan if he determines that the lessee has failed to make adequate provision in a plan for safe operations or for the protection of the environment, including compliance with regulations required under section 5(a) to insure clean air. In order to preserve the rights of State and local governments to regulate land use within their jurisdiction, the Secretary may not require any modification which would be inconsistent with a State coastal zone management program, approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) as amended, unless the Secretary of Commerce makes

the "overriding national interest" finding provided for by that Act. Under the Coastal Zone Management Act, each State with an approved coastal zone management plan has 6 months to approve or disapprove a development and production plan. The committee believes that this is an unnecessarily long period, which should be shortened. Accordingly, as described in the analysis discussion of section 507 of the 1976 Act, the committee also amended the Coastal Zone Management Act to reduce the review and approval period for States to 90 days (or 3 months) in conformity with new section 25 of the OCS Act.

The committee expects that Federal, State, and industry cooperation will resolve almost every dispute over proposed development and production plans. Once a lease has been issued, it should be the unusual case where an acceptable plan cannot eventually be agreed upon. Reasonable modifications, in light of comments and recommendations and any hearings, would provide protection to the environment, to any affected State, and also allow prompt and efficient development.

However, the Secretary is given the authority to dissapprove a plan but only for four specified reasons. The Secretary shall disapprove a plan only: (1) If a lessee fails to demonstrate that he can comply with the requirements of Federal law, including this Act; (2) if a plan cannot be modified so as to be, to the maximum extent possible, consistent with approved coastal zone management programs of coastal States; (3) if operations threaten national security or national defense; or (4) if, because of exceptional geological conditions, exceptional resource values, or other exceptional circumstances, the proposed plan would be subject to cancellation under the criteria described earlier as to section 5(a)(2).

If a plan is disapproved because lessee cannot demonstrate compliance with the law or Federal "consistency" requirements, where the lessee should have known of applicable coastal zone plans approved prior to issuance of the lease, the Secretary may cancel the lease immediately and the lessee is not entitled to any compensation.

If a plan is disapproved for national security, national defense, or environmental reasons or for inconsistency with an applicable coastal zone plan approved after issuance of the lease, the Secretary shall allow 5 years, with appropriate lease extensions, to determine if compliance is possible. At any time during the 5 year extension, the lessee can submit or be required to submit the same or a new plan for approval, which shall be reviewed in the same manner as an original plan. Ordinarily, if no plan is approved at the end of the 5 year period or after a shorter period when requested by the lessee and agreed to by the Secretary, the lease is to be canceled and the lessee is entitled to compensation in accordance with the standards detailed in section 5(a)(2). However, compensation can be denied under section 5(c) of the Act if the lessee does not act in good faith and is, therefore, not duly diligent.

In addition, subsection 25(i) provides that the Secretary may cancel or terminate a lease, without compensation, for failure of an owner to submit a plan, or comply with a plan, after notice is given of such failure, a reasonable period allowed for corrective action, and an administrative hearing is held. Ordinarily, as described in subsection 5(d)

failure to comply with the Act, lease terms, or applicable regulations on a producing lease, can result in cancellation only after an appropriate proceeding in the U.S. district court. The committee was concerned that applying this type of judicial proceeding to the development and production plan might lead to delay. Therefore, under subsection (i), the termination or cancellation is in effect at the completion of the administrative proceedings. Judicial review, rather than judicial approval, is to occur in the U.S. district court.

Again, it was the committee's belief that disapproval for environmental reasons would be most unusual. In almost all cases, if an area was leased, operations pursuant to a lease should be able to be modified so as to insure safe operation. Only if such modifications are impossible would the extreme remedy of disapproval, followed by cancellation and reimbursement be necessary.

Of course, even if activities on a lease pursuant to a development and production plan are approved, or modified and then approved, such activities can later be suspended, and such lease can be cancelled or terminated, as provided for in regulations pursuant to subsection 5(a) of this Act.

The committee recognizes that, of necessity, some flexibility is needed in administering the development and production activities pursuant to a plan. Some exploration activities will continue during development and production phases, pursuant to a plan. Later discoveries, or other events, might indicate the need to have a plan revised.

Periodic review of the plan in light of changes in available information and other onshore or offshore conditions is required, and if the review indicates that a plan should be revised in light of such changes, the Secretary shall require revision. In addition, the Secretary can allow revisions, requested by an operator, if such revision will lead to greater recovery of oil or gas, improve the efficiency, safety and environmental protection of operations, will be the only means available to avoid substantial economic hardship to the lessee, or generally is not otherwise inconsistent with the OCS Act. Such revisions can be allowed only if it is consistent with the protection of the environment. Any revision of an approved plan which is significant is to be reviewed after the comment and recommendation procedures applicable to the initial decision on a plan, and if necessary, through the NEPA procedures for a "major Federal action."

Finally, to continue the committee's policy of limiting duplicative or unnecessary requirements, subsection 25(j) provides for submission of any portion of a plan, providing for production and transportation of natural gas, to the Federal Power Commission. The Secretary of the Interior and the Commission shall coordinate activities so as to avoid duplication of effort, especially as to be preparation of any environmental impact statement.

Section 26.—Outer Continental Shelf Oil and Gas Information Program

Section 26 describes the procedures and requirements for obtaining and releasing information from lessees and permittees.

Subsecton 26(a) requires lessees and permittees to grant the Secretary of the Interior access to all data obtained from OCS activities.

Copies of specific data and interpretations are to be furnished upon request to the Secretary. If interpretations are supplied, the lessee or permittee is not to be held responsible for any consequence of its use or for any reliance upon them, provided they are made in good faith.

Federal agencies are to provide the Secretary with relevant information in their possession. Also, any information furnished in the same manner and form as used in the normal conduct of a lessee's business, are to be supplied free of charge, except for the reasonable reproduction costs. If information is requested in some other form, however, or if any information is requested from a permittee generally, the Secretary is to pay the reasonable costs of both processing and reproduction.

Planning information to States

Subsection 26(b) requires that information from lessees and permittees be processed, analyzed, and interpreted by the Secretary and then a summary of data made available to affected States. Such summary shall include estimates of the amount of oil and gas, the size and timing of development if and when oil and gas is found, and the expected locations of facilities and pipelines.

The intent of this subsection is to ensure that affected states are provided summaries of all information relating to potential or existing OCS production in order to assist them in planning for any onshore impact. Recognizing that all states may not have the resources to review information or may not be supplied with certain information because of confidentiality provisions, this subsection would ensure that the states have comprehensive and timely information available as soon as feasible for comment and planning purposes.

Confidentiality

Subsection 26(c) requires the Secretary to promulgate regulations to assure the confidentiality of privileged information received under this section. These rules must set forth the time periods and conditions for any eventual release of such information. The regulations must also include a provision that privileged information itself is only transmitted to States if a lessee or permittee and all owners of the information so agree.

If there is no agreement as to release of information, the Governor of the affected State or his designee has the right as provided in subsection 26(d)(2) to inspect such information at regional offices of the Department of the Interior. However, no such inspection of confidential information is permitted prior to a lease sale covering the area about which the information was developed.

Subsection 26(d) requires the Secretary to transmit to affected States all relevant information received or prepared by the Secretary under this section, subject to applicable confidentiality regulations. This includes all relevant programs, plans, summaries, reports, EIS's, tract nominations(including negative nominations), lease sale information, including all modifications, revisions and comments.

Any privileged information transmitted to the States or knowledge obtained by the States through inspection is subject to confidentiality regulations.

Subsections 26(e) and 26(f) are intended to further insure the confidentiality of information by providing procedures for actions and restrictions against State and Federal officials who "leak" privileged data, and make the governments and not just the employees responsible for such leaks. If any State or Federal official reveals information in violation of confidentiality regulations, the State or Federal Government may be sued for appropriate damages. The State and the Federal Government may not raise defenses of sovereign immunity or defenses based on the "ultra vires" nature of the employee's or official's action. The committee realizes that precluding defenses, especially of sovereign immunity, by a State or by a Federal statute is unusual. It, therefore, made such a preclusion voluntary—in effect a waiver, if a State wishes to receive or gain access to privileged information, it must enter into a written agreement agreeing to waive these defenses as a condition precedent to receipt or access.

Finally, subsection 26(g) preempts any State law which might provide for public access to privileged information obtained by the State from the Secretary.

Subsection 26(h) requires the Secretary to withhold privileged information from any State which he finds cannot or does not comply with confidentiality regulations. Transmittal may be resumed when such situation no longer exists.

Finally, under this section, any geological and geophysical information obtained in the conduct of exploration by any Federal agency (or Federal contractor) may not be withheld from the public.

Section 27.—Federal Purchase and Disposition of Oil and Gas

Section 5 of the Outer Continental Shelf Lands Act of 1953, allows the Secretary of the Interior to reserve oil and gas accrued or reserved to the United States as royalty. Present regulations issued by the Department of the Interior, 30 C.F.R. Section 225A, provide for the disposal or distribution of such royalty oil. The 1976 Amendments to the Outer Continental Shelf Lands Act provide many new bidding options, involving royalties and net profit shares. Section 27 is intended to provide the procedures for the securing of royalty and net profit share oil and gas, and if no royalty or net profit share is part of an accepted bid, for purchase of oil and gas, and the distribution of such oil and gas.

Section 27(a) provides that the Secretary of the Interior can demand that all royalty or net profit shares, or both, accruing under any lease or permit issued or maintained under the Outer Continental Shelf Lands Act is to be paid in oil and gas. Paragraph (2) of this subsection provides that in those cases where there is a royalty or net profit share amounting to less than 16⅔ per centum by volume of the oil and gas produced, the Secretary shall have the right to purchase oil or gas from leases at the regulated price, or if there is no regulated price, at the fair market value. This paragraph allows the Secretary to purchase oil and gas so that he can make it available as he would otherwise make available royalty or net profit share oil or gas, when he accepts bids with a low or no royalty or net profit share, or where after production on a lease has commenced, the Secretary agrees to reduce or eliminate the royalty or net profit share. However, the Secretary cannot obtain, either by purchase or royalty or net profit share,

no more than 16⅔ per centum by volume of the oil and gas or the percentage of the royalty or net profit share, which ever is greater.

Paragraph (3) of this subsection also provides that the Secretary, instead of selling royalty, net profit share, or purchased oil and gas under this section, can transfer it to other agencies for disposal within the federal government.

Subsections (b) and (c) provide for the distribution of royalty, net profit share, or purchased oil and gas respectively. Under both subsections, if any law provides for the mandatory allocation of either oil or gas, or provides for a regulated price for such oil or gas, or provides for both, those provisions of law dealing with allocation and regulated price are to apply. Procedures established in regulations by the Secretary for distribution of oil or gas apply only in the absence of any statutory provision setting a mandatory allocation or a regulated price for OCS oil and gas.

Subsection (b) provides that oil obtained pursuant to this section not otherwise allocated or regulated, is to be offered to the public and sold by competitive bidding at not less than its fair market value. Fair market value is defined in section 2 of this Act.

In accordance with the Small Business Act (15 U.S.C. 631), the present regulations for the disposition of royalty oil provide for allocation of such oil to "small refiners." It is the intention of the committee that such disposition be continued. Therefore, section (b) also provides that if the Secretary determines that small refiners do not have access to adequate supplies of oil at equitable prices, he is to make the oil he has obtained available, either through a lottery or an equitable allocation, in such a way as to insure sufficient amounts of such oil to small refiners.

A "small refiner" is defined in subsection (e)(2) as an owner of a refinery or of refineries "who qualifies as a small business concern under the rules of the Small Business Administration and who is unable to purchase in the open market an adequate supply of crude oil. * * *"

It is intended that the Secretary, from time to time, classify these refiners eligible for preferential access to OCS oil obtained under section 27 and that, while the refiner must be a small business concern, the Secretary is to have the discretion to adopt the definitions of "small refiner", either as employed by the Small Business Administration, or in any other manner consistent with Federal policy as to refineries reflected in the Mineral Leasing Act of 1920, as amended on July 13, 1946; in the Small Business Act; in the Emergency Petroleum Allocation Act of 1973; and in various federal antitrust laws and federal programs.

Subsection (c) provides that, in the absence of mandatory allocation, the Secretary is to sell to the public by competitive bidding any gas obtained pursuant to this section. If the Secretary finds that there is an emergency shortage of gas in any particular region of the United States, the Secretary may allocate or conduct a lottery for such gas and limit participation in such sale, allocation, or lottery to persons or business concerns serving regions suffering such a shortage.

There is, of course, the possibility that oil or gas obtained will not receive acceptable bids, and not be able to be otherwise transferred to

another federal agency for use. In such a situation, or in any other situation, subsection (d) provides that the lessee is to take back any federal oil or gas and pay to the United States an amount equal to the regulated price or if there is no regulated price, the fair market value.

Presently, section 12(b) of the Outer Continental Shelf Lands Act provides the Federal Government, in emergency situations, has the right to purchase all of the oil or gas obtained from the Outer Continental Shelf. Subsection (f) of this section makes it explicit that nothing in this section is to eliminate that power.

Section 28.—Limitations on Export

The findings, purposes, and policies of the 1977 amendments make it clear that the development of the Outer Continental Shelf is to be one method to reduce dependence on foreign energy sources and increase the domestic supply of oil and natural gas. It is the intention of the committee that oil and gas obtained on the Outer Continental Shelf of the United States be ordinarily reserved for domestic use. Section 28 limits exports of any OCS oil and gas. Exports are to be allowed only in cases of exchange agreements, efficiency, or the national interest, as the President determines, and then only when such exports do not add to dependency on foreign energy sources and when the President makes a specific finding to this effect. The President must submit his findings and recommendations to Congress as to the export of any oil or gas for approval or disapproval. If the Congress, within sixty (60) days, passes a concurrent resolution of disapproval stating that such export would not be in the national interest, further exports are to cease.

Section 29.—Restriction on Employment

This section prohibits certain Department of Interior employees considered by their position to have had managerial or policymaking responsibility, from accepting employment with any entity regulated under this Act, for 2 years after leaving the Department.

Section 30.—Fishermen's Gear Compensation Fund

The committee was concerned about the possible interference of OCS and OCS-related activity on fishermen. The committee believed that some formal mechanism was necessary to protect commercial fishermen against economic loss resulting from OCS leasing—a Federal action—in cases where they would not otherwise have a prompt and equitable means of obtaining relief. Experience in the North Sea indicates that this may be a fairly serious problem, and the committee sought to provide the Secretary of Interior with the means to deal with the problem.

The committee was aware that substantial local opposition to OCS leasing in some frontier areas, such as the Georges' Bank was due to fears by fishermen about the negative impact of exploration and development and production on their continuing attempts to harvest and collect sufficient quantities of resources to allow them to earn a decent living.

This section authorizes, but does not mandate, the creation of regional Fishermen's Gear Compensation Funds to provide a means by

which commercial fishermen may recover for damages caused to their equipment by activities associated with OCS oil and gas exploration, and development and production. Establishment of one or more funds is permissive, not mandatory. A "commercial fisherman" is specifically defined in subsection 30(a) to be limited to any citizen of the United States whose primary source of income is derived from the harvesting of living marine resources. Equipment subject to compensation, fishing gear, is defined as any vessel, and any equipment, whether or not attached to a vessel, used in commercial handling or harvesting.

The fund

The Secretary is authorized to establish a fishermen's gear compensation fund for any OCS area to provide reasonable compensation for fishing gear and related damages to commercial fishermen due to OCS related activities. Each such fund may sue or be sued in its own name.

Each fund would be financed by assessments made part of new OCS leases in the area concerned, and would be maintained at a level not to exceed $100,000. Specifically, as a condition of any future lease issued under this Act, the lessee must agree to pay amounts, if and as specified by the Secretary, up to $5,000 per year per lease for the purpose of establishing or maintaining a fishermen's fund. Each fund is to be maintained at a level not to exceed $100,000 and, if depleted, is to be replenished by equal assessments on each area leaseholder whose lease was issued after the date of enactment of this Act. In addition, the fund may borrow up to $1,000,000 from the Treasury in the event that the amounts available are not sufficient to pay a fund's obligation.

Payments

A revolving account within the U.S. Treasury is to be established for each fund, to be available to the fund to make authorized payments which is limited to administrative and personnel expenses of the fund, and the payment of claims in accordance with the detailed procedures.

Payments from the fund are to be made for demonstrated actual and consequential damages. Such damages include, but are not necessarily limited to, repair or replacement of the damaged items and loss of profits, due to the damage of fishing gear by materials, equipment, tools, containers, or other items associated with OCS activities. No payment is to exceed $10,000 per claimant per accident.

It is not intended that these funds supplant liability where responsibility or fault can be shown. To facilitate claims under ordinary tort principles, the Secretary may promulgate regulations establishing and classifying potential hazards to commercial fishing from OCS activities and providing, whenever practicable, for all items used on the OCS to be properly stamped or labelled with the owner's identification prior to their actual use. To make it explicit that the fund is only to be used when other remedies are not available, the section provides that no payment by the fund shall be made when the damage is caused by OCS equipment where the ownership and responsibility for it is known.

Finally, payments by the fund are intended to be made for damages only to the degree the fisherman is not responsible for the injury.

Specifically, no payment shall be made by the fund to the extent that damages were caused by the negligence or fault of the commercial fishermen making the claim.

Claims procedure

The Secretary may prescribe and amend regulations for the filing, processing and settlement of claims. Such regulations may include time limitations on filing and, of course, use of certain forms. As noted earlier, to facilitate non-fund tort claims, the Secretary may classify potential hazards. Such classification, of course, would be helpful in use of a claims procedure under the fund by establishing the types of activities that may result in numerous claims.

Claims are to be referred to a hearing examiner and all lessees in the area are to be notified. Any lessee is entitled to submit evidence at any hearing on a claim.

The hearing examiner can administer oaths and subpoena the attendance of witnesses and the production of books, records and other pertinent evidence and shall promptly adjudicate the case and render a formal decision.

Hearings are to be conducted close to the location of the incident that led to the claim. Specifically, they should be held within the U.S. judicial district wherein the matter giving rise to the claim occurred. If the matter occurred within 2 or more districts, the hearing can be held in any of the affected districts. If such matter occurred outside of any district, it is to be held in the nearest district.

Unless there is a request for judicial review, amounts awarded by the examiner shall be certified to the Secretary, who shall promptly and without any review or modification, disburse the amounts.

Any person suffering legal wrong or who is adversely affected or aggrieved by the decision of a hearing examiner is entitled to seek judicial review in the U.S. Court of Appeals of the nearest circuit or of the District of Columbia, within 60 days. The procedures for such review should be those described in section 23(c)(5) and (c)(6) of this act, except the record to be reviewed shall be that of the examiner.

Section 31.—Documentation, Registry and Manning Requirements

The committee was concerned about the testimony of numerous witnesses that foreign workers on the U.S. Outer Continental Shelf have been increasing in recent years. The committee was also aware of recent studies showing that many foreign countries authorizing off-shore exploration, development and production have formally developed policies and programs to require the employment of nationals in off-shore and off-shore-related activity.[56]

More recently, the General Accounting Office prepared "A Study of the United Kingdom's Approach to Developing North Sea Oil and Gas Reserves (1977)". That report made it clear that a formal criteria of the British Government in granting off-shore leases in a com-

[56] In 1975, the Ad Hoc Select Committee on the Outer Continental Shelf visited North Sea Petroleum Operations in the United Kingdom and Norway. Chief Counsel to the Committee prepared a detailed Memorandum as to that visit and the Library of Congress prepared a Study of operations. That Memorandum and Study indicated the formal "national" use policies of those countries. See Library of Congress, "North Sea Petroleum Operations in the United Kingdom and Norway" at 6–7 (Scotland) and at 27 (Norway) (November 1976), (hereafter North Sea Study) and Memorandum by Martin H. Belsky, Visit of the Ad Hoc Select Committee on the Outer Continental Shelf to the North Sea, in North Sea Study at 42, 42–47, 49–50, and 53.

pany's past performance and assurances that British citizens will be used in off-shore and off-shore-related activity. In addition, licensees must sign a "memorandum of understanding" between Department of Energy and "United Kingdom Off-shore Operators Association Limited," which provides for preference to Britons in off-shore-related activities.

Norway, in its legislation concerning the Norwegian Continental Shelf, Fourth Edition (January 1973): "Royal Decree of December 8, 1972, relating to Exploration for and Exploitation of Petroleum in the Seabed and Substrata of the Norwegian Continental Shelf," section 54, similarly requires exploitation to be from Norwegian bases, to give preference to Norwegian goods and services, and makes past performance and future assurances of Norwegian preference a formal criteria in the awarding of leases.

Section 31, or course, does not go as far as these preferences for use of domestic workers in all off-shore and off-shore-related activity. It is limited to crews of OCS facilities and vessels.

The committee was also concerned about the safety of foreign vessels used for OCS activity as evidenced by its adoption of provisions, described above, in section 203 providing for Coast Guard supervision over foreign flag vessels. Section 31 seeks to maximize American employment opportunities during U.S. Outer Continental Shelf operations and to provide the greatest measures of protection for the marine environment from operations involving the exploration, development and production of OCS resources.

Section 31 requires the Secretary of the department in which the Coast Guard is operating to promulgate regulations within 6 months of enactment of the 1977 Amendments to require, with two exceptions, that vessels or other vehicles or structures used for OCS activities be manned or crewed by U.S. citizens or permanent resident aliens. "Permanent resident aliens" are those lawfully admitted to the United States, in accordance with the Immigration and Naturalization Act of 1952, as amended, sections (101)(a)(20), 8 U.S.C. 1101(a)(20). This requirement is prospective only. It only applies to vessels, vehicles or structures used one year after enactment of the regulations and thus no later than 18 months after enactment of the 1977 amendments.

The two exceptions are intended to avoid any disruptions in OCS activities by this manning requirement. First, the requirement does not apply where "specific contractual requirements or national registry requirements in effect at the time of the promulgation of the regulation" provide for foreign personnel. This waives the requirement of this section requiring exclusive use of American citizens or resident aliens when an existing contract already covers operations. In this case, immediately upon the expiration of the contract, the American crew requirement would come into effect.

This also omits from the citizenship or permanent residence requirements those members of the crew of foreign-flag vehicle or structure that come under the manning requirements established under certification of registry of other nations, generally only the marine crew. Any such foreign manning laws enacted after the passage of this law would not be applicable.

Second, section 31 does not apply if "there are not a sufficient number of such citizens or aliens who are qualified and available for work." The committee recognizes that special circumstances may exist which prevent all operators from complying within the prescribed time, and has, in those instances, made allowance for the temporary employment of foreign nationals until qualified U.S. citizens or resident aliens are available.

The provision as to use of citizens and permanent resident aliens applies only to "manning" or "crewing". Thus, a specialist called in to handle an emergency situation would not be included.

Section 31 also requires that any vehicle or structure used one year after the effective date of the regulation and built or rebuilt after this period, "when required to be documented, be documented under the laws of the United States."

This provision is intended to strengthen control over OCS operations by increasing the ability of the Coast Guard to monitor the construction and operations of vehicles used off-shore of the United States. The committee intends that "rebuilt" means substantial repairs or changes and not minor repairs or additions.

The committee recognizes that only vessels can be documented and only vessels of 5 net tons or more which are engaged in commerce must be documented. Vessels can include semi-submersible, submersible, or jack-up drill rigs and drill ships, whether propelled or self-propelled; platforms are never documented. No fixed rigs (platforms) are required by U.S. law to be documented, because they are not engaged in commerce. Many rigs are documented by the Coast Guard under the classification of seagoing barges because of the owner's need to obtain a marine insurance rating or to gain eligibility for marine finance programs such as the Maritime Administration's Title XI Mortgage Guarantee program.

This section simply provides that when required to be documented, for whatever reason, the rigs would have to be documented in the United States to be eligible to work on the OCS (if the rig is built or rebuilt 1 year after the regulation's promulgation).

Documentation under the laws of the United States can be under one of two types, either certification or "enrollment and license."

Documentation, through a Certificate of Registry can be applied to American or foreign built vehicles. Certification requires that: (1) The vessel be of 20 net tons or more; and (2) it be wholly owned by U.S. citizens. In this context, "citizen" means, for an individual, that he was native born, naturalized, or derived his U.S. Citizenship from his parents. For a corporation it means that it is formed under the laws of the United States or one of the States, that the president or chief executive officer and the chairman of the board are U.S. citizens, and that no more than a minority of a board quorum are noncitizens. Documentation statutes, as such, do not require that any of the shareholders of a corporation which owns a vessel under Certificates of Registry be U.S. citizens.

In order to be eligible to operate in U.S. coastwise trade, documentation under Enrollment and License is necessary. This requires: (1) A minimum that the vessel meet the tonnage and citizen-ownership

requirements for a Certificate of Registry; and if the owner is a corporation, association or partnership, it must be 75 percent owned by U.S. citizens; and (2) that the vessel itself must be built in the United States and if more than 500 tons, not have been rebuilt outside the United States, and not have been previously owned by a foreigner or placed under a foreign flag.

Finally, section 31 reinforced the provisions of section 4(f) of the amended OCS Act by requiring that all rigs and other vessels and structures involved in OCS activities comply with U.S. prescribed design, construction, alteration, and repair standards for rigs and platforms. This requirement is intended to ensure that U.S. safety and environmental standards apply to all equipment used on the Outer Continental Shelf. It is not, however, this committee's intention to disrupt drilling operations by equipment now in the OCS. The implementation of these regulations for vessels and equipment now on the OCS should be promulgated in such a manner as to provide for a period of transition to full compliance with U.S. standards.

TITLE III—OFFSHORE OIL POLLUTION FUND

Title III provides the procedures to be followed in the event of an oilspill and compensation for cleanup costs and damages resulting from such a spill. The title applies to spills from any offshore facility in the OCS and any transportation device, while in OCS waters, including vessels for the delivery of the oil and gas from the offshore facility.

The committee strongly supports comprehensive legislation to establish a system of liability and compensation for oil damage. Specifically, the committee is aware that such comprehensive legislation, H.R. 6803, will be considered by the House very shortly.[57]

If such comprehensive legislation is not enacted by the time of final consideration of the 1977 OCS amendments, it is the committee's intention that the amendments be offered on the floor, or in conference, to conform title III to comprehensive proposals. If such legislation is enacted, it is the committee's intention to delete this title. Until such legislation is enacted however, the provisions of title III, as they may be conformed later, are needed to protect other resources and uses of the Outer Continental Shelf. A section by section analysis of the present title III follows:

Section 301.—Definitions

This section defines 13 terms which appear in the oilspill liability title.

The section first defines what expenses are to be included in assessing liability by a spiller to a newly created pollution fund. The committee

[57] On May 16, 1977, the Merchant Marine and Fisheries Committee reported out H.R. 6803, House Report 95-340. As this bill was also within the jurisdiction of the Committee on Public Works and Transportation, it was thereafter reviewed by that committee and was approved on June 30, 1977, with certain amendments. These amendments were then approved by the Committee on Merchant Marine and Fisheries on July 13, 1977. Floor action was then requested for the bill with agreed amendments. Even though the bill has bi-partisan support and Suspension Calendar action was requested, the press of other legislation has delayed consideration of the bill by the full House as of the time of this report.

intends that the Department of Transportation establish specific criteria, consistent with these definitions, for the determination of "cleanup costs" and "damages".

"Cleanup costs" are to include all reasonable and actual costs incurred in removing or attempting to remove oil discharged from an offshore facility or vessel or in attempting to prevent, reduce, or mitigate damages from such a discharge. Costs incurred by the Federal Government, any State, local or foreign government, and the contractors and subcontractors of such Governments, including administrative expenses, such as the transportation of personnel and equipment to and from an oil spill, are specifically covered. The committee hopes and expects that State, local and foreign governments will cooperate fully with Federal officials in cleaning up oilspills, but they need not be operating under Federal supervision in order to be eligible for reimbursement for their cleanup costs pursuant to this title. Cleanup costs must be "reasonable" (necessary, and approximately equal to the market value of similar goods and services), and "actual" (really incurred).

"Damages" are to be all direct and actual injuries, except cleanup costs, which are proximately caused by the discharge of oil from an offshore facility or vessel. The types of damages recoverable under this title, such as injury to real or personal property or natural resources and loss of income or earning capacity, are listed in section 307. The committee intends the phrase "direct and actual" to refer to the nature of the injury and not the cause of it. In order to claim damages under this Title, a claimant must be directly and actually injured, but such injuries need only be "proximately caused" by an oil discharge.

"Discharge" includes any spilling, leaking, pumping, emptying, pouring, or dumping, whether intentional or unintentional, and applies to accidental as well as intentional or operational discharges.

An "offshore facility", included within the scope of this title, is any oil refinery, drilling structure, oil storage or transfer terminal, pipeline, or related appurtenance which is used or capable of being used to drill for, pump, produce, store, handle, transfer, process, or transport OCS oil, but does not include vessels or deepwater ports. To be considered an offshore facility under this title, a facility must be located on the Outer Continental Shelf. Vessels are separately defined and are separately treated by this title. However, once a drilling ship or other watercraft is attached to the seabed for exploration, development or production, it is to be considered an "offshore facility" rather than a vessel, for purposes of applying the differing requirements for a facility as compared to a vessel.

A "vessel" means every description of watercraft or other contrivance, whether or not self-propelled, which is used to transport oil directly from an off-shore facility. Once a vessel is operating in the "navigable waters" of the United States, it is not included in this title.

This title establishes a fund for the payment of damages beyond a set maximum of liability for the spiller. For conveniences, this section defines "fund" as the Off-shore Oil Pollution Compensation Fund established under section 302(a) of this title, and "revolving account" as the account in the U.S. Treasury for the fund which is established under section 302(b) of this title. The fund is to be administered by

the Department of Transportation, while the revolving account, which supplies moneys to the fund, is to be located in the Treasury. Amounts in the revolving account are to be made available to the fund through an appropriations act.

Liability for all cleanup costs and for damages to a set maximum is placed on an "owner" and on an "operator" which are separately defined. The owner of an offshore facility is any person owning such facility, whether by lease, permit, contract, license, or other form of agreement. The owner of an offshore facility which was abandoned without the prior approval of the Secretary of the Interior is the person who owned the facility immediately prior to its abandonment. If the facility was abandoned with the prior approval of the Secretary, the previous owner would not be liable for any discharges from the facility. The owner of a vessel would be any person owning the vessel.

The operator of an offshore facility is any person operating such facility whether by lease, permit, contract, license or other formal agreement. The operator of an offshore vessel would be any person operating or chartering by demise the vessel.

"Person" is defined to include any legal entity, including an individual, a public or private corporation, partnership, or other association, or a Government entity, and "person-in-charge" is to apply to the individual immediately responsible for the operations of an offshore facility or vessel. In the event that such individual is not aboard the offshore facility or vessel, the one who has been assigned, or who has assumed, his responsibilities is to be considered the person-in-charge.

The "Secretary" referred to in this title is to be the Secretary of Transportation. It is the intent of the committee that the Secretary delegate authority to the Coast Guard to implement and administer the provisions of this title.

An "incident" is any occurrence or series of related occurrences which cause, or immediately thereafter, oil pollution, meaning a harmful discharge as described in section 303 of this title. The incident may involve one or more offshore facilities or vessels.

Section 302.—Establishment of the Fund and the Revolving Account

Section 302 establishes an Offshore Oil Pollution Compensation Fund in the Department of Transportation. It is the intention of the committee that the Coast Guard fulfill the responsibilities of the Department with respect to administration of the fund. The fund may sue or be sued in its own name.

A revolving Treasury account is also established, without fiscal year limitation, to be available to the fund. Subsequent appropriations legislation is to be enacted with general language establishing the fund and the revolving account, without fiscal year limitation, and with provisions for the use of the revolving account by the fund.

Section 321 of this title authorizes appropriations for the establishment and operation of the revolving account and the fund, and initial and continuous funding for this title.

Section 303.—Prohibition

This section prohibits the discharge of oil from any offshore facility or vessel in quantities which the President determines to be harmful under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(a)).

Section 304.—Notification

Any person in charge, as defined in section 301, of an offshore facility or vessel must notify the Secretary as soon as he learns of any oil discharge in harmful quantities from such facility or vessel. Failure to notify is punishable by a fine of up to $10,000 or one year in jail, or both.

Report of an oilspill as soon as it occurs enables Federal officials to be promptly sent to the spill scene to supervise or undertake cleanup activities. If the corporation which owns or operates the facility or vessel, and not the person directly in charge, was held responsible for notification, the commencement of cleanup operations might be substantially delayed. The sooner that cleanup actions are taken following a spill, the easier and less expensive it is to clean it up.

In order to encourage prompt and accurate notification, a limited immunity provision is included. Notice or any information obtained as a result of such notice cannot be used against any person supplying the report, except for a prosecution for perjury or giving a false statement.

Section 305.—Removal of Discharged Oil

This section directs the President to remove or arrange for the removal of spills of harmful quantities from offshore facilities and appropriate vessels, unless he finds that the owner or operator will do so properly and expeditiously. Cleanup operations are to be conducted, to the greatest extent possible, in accordance with the National Contingency Plan established pursuant to section 311(c)(2) of the Federal Water Pollution Control Act. Money in the revolving account can be drawn in order to pay promptly for all cleanup costs incurred by the Government in removing or minimizing damages caused by an oil discharge.

Section 305 corresponds closely to similar provisions in the Federal Water Pollution Control Act, which currently governs Federal cleanup of oil spills of offshore facilities within State waters, but not on the OCS. The intent of this section is to extend the existing program to discharges on the OCS. Although the section places Federal cleanup responsibility nominally with the President, it is understood that the Coast Guard would administer this provision.

In addition, this section allows the President to pay States immediately for any cleanup expenses as they accrue.

Although other sections of this title provide that states would be entitled to seek such reimbursement directly from the fund, some states have indicated that they need the assurance of full and immediate reimbursement, as would come from the President more quickly than from the fund, in order to commit state funds to cleaning up oil spills.

Section 306.—Duties and Powers

This section outlines the responsibilities and the powers of the Secretary of Transportation in administering this title. The committee intends that such duties, responsibilities and powers be delegated to the Coast Guard.

The Secretary is to administer and maintain the fund, to establish regulations and provide for the fair and expeditious settlement of

claims, to provide for public access to information related to this title, to submit an annual report to the Congress, and to perform other functions that are prescribed by law.

The Secretary can utilize the personnel or services of any government agency, whether federal, state or local, or of any other organization, can issue and amend rules and regulations, can conduct investigations, can obtain information and hold meetings or public hearings, can enter into contracts, agreements, or other arrangements for the acquisition of material, information, or other assistance, and can issue and enforce appropriate legal orders during proceedings.

Section 307.—Recoverable Damages

If real or personal property is damaged or destroyed, the owner may recover the value of the loss or damage as of the time of injury, the cost of restoring, repairing, or replacing such property, any decline in value of such property, and any loss in income during repair, restoration or replacement.

The scope of this section includes recovery for costs incurred by private parties in removing or attempting to remove discharged oil, and in reducing or mitigating, or attempting to reduce or mitigate, damages to real or personal property. It is intended that property owners will only seek compensation for replacement costs when they cannot otherwise restore or repair their property.

If real or personal property or natural resources are damaged or destroyed by an oil discharge, recovery is also allowed for loss of income or impairment of earning capacity if the claimant derives at least one-fourth of his annual earnings from activties which make use of the property or resources which have been damaged or destroyed. Recovery is limited to losses incurred during a 5-year period. This covers businesses that do not own property or resources affected by an oil spill, but whose income depends upon the ability of them or their customers to use such property or resources. Among the possible claimants under this subsection are fishermen in cases where fish are polluted or killed by an oil spill, and hotel and restaurant owners and employees in resort towns which lose business because of an oil spill. The term "income" is used in this subsection to include wages, earnings, or profits, and is not intended to mean net income or net profits. A hotel or restaurant owner could recover lost income that would have paid for his employees' wages or salaries, as well as his own, among other costs. In such cases, the owner would be required to distribute such lost wages or salaries to his employees.

If natural resources are damaged or destroyed by an oil discharge, Federal or State governments may recover the costs and expenses of restoring, repairing, or replacing such resources. Replacement costs and expenses would only be recovered if it is impossible to otherwise restore or repair the resources. The committee anticipates that Federal or State governments would seek recovery when oil damages or destroys public beaches, marshlands, wetlands, fisheries, flora, fauna, wildlife, and other natural resources.

Finally, if real or personal property is damaged or destroyed, the Federal Government or any State or local government may recover any related lost tax, royalty, rental, or net profit share revenue. Recovery is limited to revenue losses incurred during a 1-year period.

Section 308.—Cleanup Costs and Damages

This section provides for unlimited liability for cleanup costs, and limited liability for damages, to be borne by the owners and operators of offshore facilities and vessels.

Subsection (a) holds the owner and operator of an offshore facility or vessel which discharges oil to be jointly and severally liable, without regard to fault, for the full costs of cleaning up the discharge.

A similar requirement currently exists in Interior Department regulations (30 C.F.R. 250.43). It would extend that requirement of unlimited cleanup liability to vessels while in OCS waters. The oil industry has indicated its intention to clean up spills immediately, and has established cleanup cooperatives to keep cleanup equipment near offshore drilling sites. If any Federal, State, or local official or agency acts to clean up an oilspill, the owner and operator will be required to pay all such cleanup costs. Any cleanup costs incurred by third parties would be considered damages under section 307 and an owner and operator would be liable for such damages in accordance with subsection (c) of this section.

Subsections (b), (c) and (d) provide that the owner and operator of an offshore facility or vessel are jointly and severally liable, with limited exceptions, for damages resulting from a discharge. Such liability is absolute unless the owner or operator can prove, and show to what extent, the spill resulted from (1), an act of war; or (2), the negligent or intentional act of a third party, including a government entity.

The liability of owner and operator of an offshore facility for damages is to include interest from the date of filing of a claim and is except for interest, limited to $35 million and the liability of an owner and operator of a vessel for damages includes interest and, except for interest, is limited to $150 per gross registered ton of the vessel. Liability limits specifically do not apply to interest costs.

These limits are to be increased in accordance with the rate of inflation. These limits do not apply if (1), the damages resulted from gross negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge; or (2), if the discharge resulted from a violation of applicable safety, construction or operating standards or regulations.

The intent of these subsections is to require the owner and operator to pay up to the stated amounts in damages caused by the discharge. In cases of gross negligence or willful misconduct, or violation of applicable regulations, the owner and operator would be liable for all damages associated with the spill. If a consortium or group of companies owns or operates an offshore facility or vessel, the liability limit would apply to the consortium or group. The liability of each member would be in proportion to each member's participation in the consortium or group.

The committee views the provision regarding unlimited liability for damages in certain cases as an important part of this section and a significant improvement upon existing oil spill liability law. Both the Federal Water Pollution Control Act (section 311(f), 33 U.S.C. 1321(f)) and the Deepwater Port Act (section 18(d), 33 U.S.C. 1515 (d) and (e)) deny the spiller the right to limit his liability if the

spill resulted from gross negligence or willful misconduct within the privity and knowledge of the owner or operator.

This section strengthens previous provisions in two ways. First, it extends the gross negligence and willful misconduct standard directly to the person in charge. Although gross negligence or willful misconduct must still be proven, it need no longer be traced to the owner or operator. When gross negligence or willful misconduct actually causes spills, the person in charge is much more likely than the owner or operator to have been responsible for, or at least knowledgeable of, such behavior. Second, the section denies limitation of liability if the discharge results from a violation of applicable safety, construction, or operating standards or regulations. The intent of this provision is to encourage owners and operators of offshore facilities to comply with such standards and regulations. The imposition of unlimited liability in cases where spills result from safety violations is designed to assure early compliance with various standards and regulations, and thus reduce administrative expense.

Subsection (e) deals with subrogation. If an owner or operator of an offshore facility is held liable for the costs of a spill caused by the unseaworthiness of a vessel or the negligence of the owner, operator, or person in charge of a vessel, the owner or operator of the facility is subrogated to the rights of any person entitled to recover damages from the owner, operator or person in charge of the vessel. The owner or operator of the facility can assume the legal rights of someone who is injured by the vessel's owner, operator, or person in charge.

Similarly, when the owner or operator of a vessel is held liable for the costs of a spill caused by the negligence of the owner, operator, or person in charge of an offshore facility, the vessel's owner or operator is subrogated to the rights of any person entitled to recover damages from the owner, operator, or person in charge of the facility. The owner or operator of the vessel can sue the owner or operator of the facility.

The liability provisions of this Title do not affect or limit the rights of an owner or operator of an offshore facility or vessel, or the fund, may have against any third party who caused, whether solely, or partially, an oil discharge. An owner, operator, or the fund, can proceed against a third party when the owner, operator or the fund pays the costs of a spill which was actually caused by the third party. The extent of the third party's liability would depend on whether he had solely caused the spill or whether he had contributed to its taking place.

The intention of title III is to protect domestic interests. To provide for payment to foreign countries of non-U.S. residents without a reciprocal arrangement in the foreign country would be unfair. Thus, subsection (f) provides that cleanup costs or damages are not to be awarded to a foreign country or a non-U.S. resident unless there is a treaty or executive agreement authorizing payment or an equivalent or similar remedy for U.S. claimants for discharges off that foreign country's shelf.

Section 309.—Disbursements from the Revolving Account

Money from the revolving account in the Treasury to the Fund is available only for (1) administrative and personal expenses; (2)

for public costs incurred in cleaning up an oil discharge, whether pursuant to this title or any State or local law, (3) private cleanup costs of an owner or operator when the discharge is caused solely by an act of war or by negligence on the part of the Federal Government in establishing and maintaining aids to navigation and (4) for all damages not paid by the owner or operator pursuant to this title. The fund would compensate claimants for damages if the owner and operator denies liability or that the spill was from their facility or vessel, if the owner or operator is exempt from liability because of an act of war; or intentional or negligent acts of third parties, if the owner or operator has not reached a settlement with the claimant; or if the owner or operator has reached the liability limit. In addition, the fund would provide compensation in cases where the spiller has not been identified. It is the intent of the committee that the fund provide full and complete compensation for all damages caused by oil discharges from offshore facilities and vessels.

However, the fund is not liable or responsible for any of the costs of or damages to a claimant which were negligently or intentionally caused by such claimant. Whenever the fund compensates a claimant, it acquires all legal rights of the claimant to recover cleanup costs and damages from the person responsible for the discharge. For example, if the owner and operator cannot reach a settlement with the claimant within 60 days pursuant to section 313 of this title, and the fund then reaches a settlement with the claimant, the fund acquires the claimant's right to recover damages from the owner and operator. Subsection (b) explicitly directs the fund to diligently pursue recovery for any such subrogated rights.

In any claim or action by the fund against an owner, operator, or other person providing financial responsibility for an owner or operator, as for example in the case where the fund has compensated a claimant for damages caused by a spill for which an owner and operator are liable, and the fund then seeks reimbursement from the owner and operator, the fund is to recover both the full amount it has paid to the claimant or to a government entity which undertook cleanup operations, and interest on that amount, except for those amounts for which there is a valid defense. Interest is to be computed at the existing commercial interest rate, and the Coast Guard in administering the fund is expected to publish guidelines for the computation of such rate. Interest is to be charged from the date upon which the request for reimbursement was issued from the fund to the owner, operator, or person providing financial responsibility, to the date upon which the amount is actually paid by the owner, operator, or other person to the fund. The imposition of an interest charge upon delayed reimbursement will encourage the owners and operators of offshore facilities and vessels, and their insurers to arrange expeditious settlements with the fund. Experience with the pollution fund, established pursuant to the Federal Water Pollution Control Act, indicates that, in the absence of such an incentive, the Government gets involved in lengthy, costly and sometimes frivolous negotiations and litigation with the liable parties.

A later section states that the revolving account for the fund is to be financed by an initial appropriation and then a 3 cents per barrel

fee. The fee need only be collected until $100 million to $200 million is in the account. Normally, the fund would maintain an account balance sufficient to cover most spills. However, it may be possible that an extensive catastrophic spill might occur that would involve costs and damages beyond the amounts in the account. In such a situation, either while the account is being built up, or if the $100 to $200 million amount is insufficient, the fund may borrow all necessary amounts to pay any cleanup costs and damages for which the fund is liable; up to $500 million at any one time.

The fund may issue notes or other obligations to the Secretary of the Treasury, according to terms and conditions prescribed by the Secretary of the Treasury. Borrowed monies are to be deposited in the revolving account, and redemptions of notes or other obligations issued to the fund are to be made from the revolving account.

The Secretary of the Treasury is to determine an appropriate interest rate, based upon the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the borrowing. The Secretary of the Treasury is authorized to purchase the fund's notes on other obligations by using as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purposes for which securities may be issued under that act are extended for this purpose. In addition, the Secretary of the Treasury may sell any notes or other obligations which he purchased pursuant to this section. All purchases, redemptions, and sales of such notes or other obligations are to be treated as public debt transactions of the United States.

This borrowing provision enables the fund to pay all costs and damages as soon as possible. The concept of authorizing the fund to borrow money in such cases in order to provide unlimited coverage was first introduced in the Deepwater Port Act, section 18(f)(3) (33 U.S.C. 1517(f)(3)). This section improves upon that provision by outlining the borrowing procedures in greater detail.

Section 310.—Fee Collection; Deposits in Revolving Account

This section provides for the collection of a fee to establish and maintain the fund and the deposit of any amounts collected by the fund. The Secretary of Transportation is to levy and collect a fee not to exceed 3 cents per barrell from the owners of OCS oil when produced.

The fee is to be collected until the balance in the revolving account reaches at least $100 million. Afterwards, the Secretary is to maintain the account at a level between $100 million and $200 million. To do so, he may suspend and reinstate the fee from time to time, or he may periodically modify the amount of the fee, but not to exceed 3 cents per barrel.

All fees, reimbursements, fines, penalties, investments, and judgments pursuant to this title are to be deposited in the revolving account, and are to be included in the calculation of the amount in the account. If the amount in the account exceeds $200 million, all sums in excess are to be deposited in the U.S. Treasury and credited to miscellaneous receipts.

Any money not needed for the purposes of the fund and its administration are to be prudently invested in income-producing securities issued by the United States. The Secretary of the Treasury must approve such investments. It is expected that such investments will be made on a short-term basis, in order to provide the fund with maximum liquidity in order to respond effectively to any unexpectedly large or any unexpectedly high frequency of oil spills.

Section 311.—Financial Responsibility

This section requires owners or operators of offshore facilities and vessels to demonstrate adequate financial responsibility so to be able to cover the liability requirements of this title.

The owner or operator of an offshore facility is to establish and maintain evidence of financial responsibility based on the capacity of the facility and "other relevant factors". Such factors should include, although need not be limited to, liability requirements, the frequency with which the facility handles OCS oil, the previous experience of the facility with regard to oil discharges, and the size and assets of companies and corporations affiliated with the owner or operator. The President is to establish rules and regulations governing the establishment and maintenance of evidence of financial responsibility shown by insurance, surety bonds, self-insurance, or other methods.

The owner or operator of a vessel is to provide evidence of financial responsibility to the Federal Maritime Commission. Financial responsibility must be based upon liability requirements and the tonnage of the vessel. An owner or operator who owns, operates or charters more than one vessel need only provide evidence of financial responsibility for the largest of his vessels. Financial responsibility may be proven with insurance, surety bonds, self-insurance, or other methods.

Offshore facilities are not presently required to demonstrate financial responsibility for liability expenses. However, under the Federal Water Pollution Control Act, the President has designated the Federal Maritime Commission to administer the financial responsibility requirement for vessels. It is expected that the President will also designate the Maritime Commission to administer the financial responsibility requirement for offshore facilities pursuant to this section, as the Commission has gained considerable experience in working with private insurance organizations. If the President or the Federal Maritime Commission determine that another agency could administer this section more effectively, however, it would still be consistent with this section of this title.

The purpose of this section is to extend the existing requirement for evidence of financial responsibility to offshore facilities, in addition to vessels. The requirement was initially imposed upon vessels in the Federal Water Pollution Control Act because vessels might spill oil and then sail beyond U.S. jurisdiction. Furthermore, many vessel owners incorporate each vessel separately and, if the vessel is seriously damaged or destroyed in an incident, the vessel owner would lack sufficient assets to meet legal liabilities. The effect of the Federal Water Pollution Control Act requirement for proof of financial responsibility has been to expand the pollution coverage offered by the

private insurance community. The committee expects this subsection to have a similar effect upon the pollution coverage available to offshore facilities. Currently, in the absence of such a requirement, some offshore operators do not have insurance coverage for oil spill liability. As financial responsibility is now to be required, the capacity of the insurance market in this area will necessarily increase. Whereas a standard commercial insurance policy covering pollution from offshore facilities currently contains a $22 million limit, such coverage might now expand to $45–50 million.

Direct action by a claimant on the fund is allowed against the surety, insurer, or other person providing financial responsibility for an owner or operator. Thus, a claimant or the fund can seek compensation directly from an insurer, for example, if an owner or operator refuses to meet his liability requirements or does not provide compensation for any other reason. Section 311 of the Federal Water Pollution Control Act, which established the key precedent for oil spill liability legislation, contains a similar direct action provision.

A fine of up to $25,000 is to be imposed upon anyone who violates the provisions of this section or any regulations issued pursuant to it.

The President is to increase the liability limits and corresponding financial responsibility requirements annually, equal to the annual percentage increase in the wholesale price index. The intent of this provision is to prevent the liability limits and financial responsibility requirements from becoming obsolete as inflation pushes up the costs of oil spills as well as the limits of insurance policies. The Water Pollution Control Act establishes liability limits of $100 per gross ton or $14 million for vessels in 1970, when insurance policies were generally limited to about $14 million. Since that time, insurance coverage has expanded to a current level of $25 million, although the $14 million limit remains fixed in the law. The committee believes that this provision will avoid such discrepancies by escalating liability limits and financial responsibility requirements along with inflation. The wholesale price index was selected, after advice from the General Accounting Office, as a reasonable indicator of inflation particularly in relation to spill cleanup costs and damages.

The committee was concerned that an owner or operator should not be required to tie up large amounts of capital by having to doubly insure, with both a State and the Federal Government, as to any possible discharge. Therefore, subsection (f) of this section provides that if an owner or operator of an offshore facility or vessel provides evidence of financial responsibility to the Federal Government under this section, he cannot be required to provide similar evidence for the same facility or vessel to any State government. States are required to accept evidence of compliance with the Federal requirement as satisfactory compliance with their State-level financial responsibility requirement for the same facility or vessel.

Section 312.—Trustee of Natural Resources

The Secretary or an authorized representative of any State is to act as trustee of the natural resources. This provision enables Federal or State governments to make claims on behalf of the public for damages to natural resources. The section stipulates that compensation received is to be used to restore, rehabilitate, or acquire the equivalent

of the damaged resources. Consistent with section 307 of this title, such compensation may only be used for acquisition purposes if restoration and rehabilitation of the damaged or destroyed resources is impossible or can only be undertaken with a low possibility of a significant amount of success.

Section 313.—Claims Procedure

This section establishes the procedures by which claimants can recover for cleanup costs and damages. In general, the claimant is to seek payment from the owner or operator or his insurer. If liability is denied, or if no settlement can be reached in 60 days, the claimant can seek payment from the fund. Any amounts paid to the claimant from the fund can be recovered, up to the liability limits and with the liability exceptions, from the owner and operator.

The Secretary of Transportation is directed to prescribe and periodically amend regulations for the filing, processing, settlement, and adjudication of claims for cleanup costs and damages caused by oil discharge from offshore facilities and vessels.

The section specifically describes the step-by-step procedure for resolution and payment of claims. Once a discharge is alleged, the Secretary is to promptly notify the owner and operator of an offshore facility or vessel, which allegedly discharged oil, of such allegation. The owner or operator may deny the allegation or deny liability for damages within 5 days of receiving notification from the Secretary. If such denial is in dispute, the owner and operator may seek administrative adjudication, and then judicial review, and the claimant may seek payment from the fund and allow the fund to proceed against the alleged violator, up to the limits of liability.

If the owner and operator does not deny the allegation of a spill or liability for damages, the owner and operator or the person providing financial responsibility is required to advertise in any area where damages may occur the procedures under which claims may be presented to them. It is expected that such advertisement will involve, as appropriate, advertisements in local newspapers, announcements on local radio and television programs, and posters in public buildings such as the post office and town hall. The text of such advertisements is to be published by the Secretary in the Federal Register. If the owner, operator, or person providing financial responsibility does not advertise as required, the Secretary is directed to do so at the expense of the owner, operator, or person providing financial responsibility.

If the owner or operator has denied an allegation of a spill or liability for damages, the Secretary is required to advertise the procedures under which claims may be presented to him for payment by the fund. Advertising is expected to be as suggested above, including publication in the *Federal Register*. Advertisement must begin within 15 days after the Secretary receives notification of an oil discharge. It is to continue for at least 30 days, and to be repeated at least once each quarter for the following 5 years.

All claims must be presented, whether to the owner, operator, person providing financial responsibility, or the Secretary, within 1 year after the damages are discovered and within 5 years after the advertising is commenced. In the case of damages caused by chronic, low-

level discharges of oil, when there might be no advertisement, claims must be presented within 1 year after the damages are discovered. All damage claims are to be on one form if such claims are presented to the Secretary for payment by the Fund. The form may be amended to include new claims as they are discovered. However, damages which are known or reasonably should be known are deemed waived if they are not included in the claim when compensation is made.

If the owner and operator does not deny liability, all claims must be presented first to the owner and operator and/or to the person providing financial responsibility. The recipient of the claim request must inform the Secretary of Transportation of the claim and the claimants of his rights under this Title.

Claimants can present claims directly to the Secretary if an owner or operator or insurer: (1) has denied an allegation of a discharge or liability for damages; (2) submits a written offer for settlement which is rejected by the claimant; or (3) has not settled the claim by agreement with the claimant within 60 days. The 60-day period begins from the date on which the claim was presented or on which advertising was commenced, whichever was later. Such non-settled claims are to be transmitted to the Secretary, together with any supporting documents within two days after a request from the claimant. Such claims are then considered to be presented to the Secretary for payment by the Fund.

The purpose of this provision is to provide for expeditious settlement of claims if the claimant is not obtaining satisfaction from the owner, operator, or person providing financial responsibility. The owner, operator, or person providing financial responsibility, is to notify the claimant of his rights, which includes the right to reject an offer.

The Secretary is to utilize the facilities and services of private insurance and claims-adjusting organizations in administering this section, and may contract to pay compensation for such facilities and services. Such contract need not comply with section 3709 of the Revised Statutes if the Secretary shows that advertising is not reasonably practicable. The Secretary must approve payment of any claim exceeding $100,000, or two or more claims from the same claimant exceeding $200,000. Such approval is to be ministerial in nature and does not call for discretionary judgments on the part of the Secretary. The Secretary is only to use Federal personnel to administer this section in extraordinary circumstances in which private organizations' services and facilities are inadequate, whether for lack of sufficient expertise, lack of sufficient personnel or materials, or other reasons.

In any dispute involving a claim that had been presented to the Secretary for payment by the fund, the claimant can submit the matter to the Secretary for adjudication if the Secretary has denied liability for a claim, or if he has not settled the claim by agreement with the claimant within 90 days. The 90-day period begins when the claim is presented to the Secretary for payment or when advertising was commenced, whichever occurred later. This provision does not provide for the settlement of claims, but for the adjudication of matters in dispute.

The owner, operator, or person providing financial responsibility may submit the following matters in dispute for adjudication: (1) A

denial of an allegation of a spill or of liability for damages; (2) an objection to unlimited liability for damages because of gross negligence, willful misconduct, or failure to comply with applicable regulations; and (3) the amount of any payment, whether made or proposed, by the fund if such payment may be recovered from the owner, operator, or person providing financial responsibility.

Disputes submitted to the Secretary of Transportation are to be referred to a hearing examiner, appointed under section 3105 of title 5 of the United States Code. The examiner is required to adjudicate the case promptly and render a decision in accordance with section 554 of title 5 of the code. The hearing examiner can administer oaths and subpoena the attendance and testimony of witnesses and the production of books, records, and other pertinent evidence for the purposes of any hearing. The hearing is to take place in the judicial district within which the disputed matter occurred. If the disputed matter occurred within two or more districts, the hearing can take place in any of the affected districts. If it occurred outside of any district, the hearing should take place in the nearest district.

If the hearing examiner's decision is not submitted for judicial review, the fund must promptly disburse the award. The Secretary cannot review the hearing examiner's decision.

Section 314.—Judicial Review

Anyone who suffers legal wrong or who is adversely affected or aggrieved by the decision of a hearing examiner can seek judicial review of the hearing examiner's decision within 60 days after it is made. Judicial review may be sought either in the United States Court of Appeals for the circuit in which the damage occurred (or, if it occurred outside of any circuit, in the Court of Appeals for the nearest circuit), or in the Court of Appeals for the District of Columbia.

Reasonable attorneys' fees and court costs are to be awarded to the claimant if the discharger or the fund seeks judicial review and the hearing examiner's decision is affirmed.

Section 315.—Class Actions

The Attorney General can act on behalf of any group of damaged citizens which the Secretary finds will be more adequately represented as a class than as individuals. Payments to the group are to be distributed to all of its members, except for reasonable costs incurred by the Attorney General. Such class suits filed by the Attorney General can not be taken against the fund or other Federal agency.

Any member of a group can initiate a class action suit if the Attorney General cannot or does not do so within 90 days after an oil discharge. Failure of the Attorney General to bring a class action suit should not affect or prejudice any class action suit brought by a member of the class. If a class includes more than 1,000 members, the requirement for public notice established by rule 23(c)(2) of the Federal Rules of Civil Procedure will be fulfilled by publishing notice of the class action in the Federal Register and in local newspapers serving the damaged parties.

Section 316.—Representation

This section provides for representation of the fund for claims under this title. The Secretary is to request the Attorney General ini-

tially to represent the fund. If the Attorney General does not notify the Secretary that he will institute court actions or otherwise represent the fund within "a reasonable time", the Secretary is directed to appoint attorneys to do so.

Section 317.—Jurisdiction and Venue

Original jurisdiction for all controversies arising under this title is to be in the U.S. district courts. The Federal district courts are to have original jurisdiction regardless of the citzenship of the parties or the amount in controversy. Venue shall lie in the district where the damage occurred (or, if the damaged occurred outside of a district, in the nearest district), or in the district where the defendant resides, may be found, or has its principal office. The fund is designated a resident of the District of Columbia for the purposes of this section.

Section 318.—Access to Records

This section provides for the maintenance of records and for Government access to them. Everyone responsible for contributing to the fund must keep records and furnish information which the Secretary calls for in regulations. The fund is to collect fees pursuant to this title at such times and such manner as the Secretary prescribes in regulations.

The Secretary is to have access to any books, documents, papers, and records of any person responsible for contributing to the fund. The Secretary is granted access to such information for the purposes of regularly examining and auditing the collection of fees.

The Comptroller General is to also have access to the books, documents, papers, records, and other information of any person required to contribute to the fund, and of the fund.

Section 319.—Public Access to Information

The public is to be allowed to inspect and reproduce any communication, document, report, or information transmitted between any Federal official and any person regarding liability and compensation for damages resulting from an oil discharge covered by this title. Exempted from this public disclosure requirement is any information covered by subsection (b) of section 522 of title 5 of the U.S. Code, and any information which is otherwise legally protected from public disclosure.

Section 320.—Annual Report

Section 320 requires the Secretary of Transportation to submit an annual report to Congress within 6 months after the end of each fiscal year. The report is to include information regarding the administration of the fund during the fiscal year just completed, a summary of the management and enforcement activities of the fund, and recommendations for legislative amendments to this title. Such amendments are to be designed to improve the management of the fund or the administration of the liability provisions of this title.

Section 321.—Authorization of Appropriations

Section 321 authorizes appropriations for the implementation of this title. Administrative funds of $10 million for the first fiscal year,

$5 million for the second fiscal year, and another $5 million for the third fiscal year are authorized. These funds are to be used to implement the various provisions of this title and to establish and institute the procedures for clean-up, notification, damage settlement, and other activities necessary to implement this title. These funds are also to be used for the administration of the fund itself until the fund collects enough money to pay its own administrative costs.

Also authorized to be appropriated to the fund are such amounts as may be periodically necessary to implement the provisions of this title. These amounts are to pay for contracts, disbursements, issuance of notes and other obligations. The authority to spend money under various provisions of this title is effective only if provided for in appropriation acts.

The appropriation section has been carefully drafted after consultation with the Budget and Appropriations Committees of the House, and is designed to comply with the requirements of the Congressional Budget Act of 1974. The committee intends that the initial appropriations will set in operation the administrative mechanisms necessary to implement this title. Once the fund builds up a substantial balance, it should cover its own administrative expenses, as well as any other administrative expenses necessary to implement this title. The committee also intends that the appropriations legislation covering the Fund and the revolving account will provide for the transactions specified in this title in language without fiscal year limitation. One appropriations bill should provide for the collection of the fee, the deposit of the fee in the revolving account, the availability of money in the revolving account to the fund for disbursement, the issuance of notes and other obligations by the fund, the placement of penalties, fines, reimbursement, investments, judgments, and other sums received under this title in the revolving account, and for any other transactions which may be necessary to fulfill the purposes of this title. The appropriations bill need not contain a monetary figure, but should provide for these transactions without fiscal year limitation.

Section 322.—Relationship to Other Law

With the exception of requirements as to financial responsibility, this title does not preempt the field of liability and does not prevent any state from imposing oil spill liability laws or additional requirements. Any state may impose requirements or liability for oil spills causing clean-up costs or damages within its jurisdiction. It is the expectation of the committee that as the new Federal scheme created by this title is implemented and gets into full scale operation, the states will find less and less of a need to enforce their own liability laws.

Claimants cannot doubly recover and thus receive compensation for the same damages or cleanup costs under both Federal and State law. Anyone receiving compensation pursuant to this title cannot receive compensation for the same cleanup costs or damages pursuant to any state or other Federal law. Anyone receiving compensation pursuant to any other Federal or State law cannot receive compensation for the same cleanup costs and damages pursuant to this title.

TITLE IV—AMENDMENTS TO THE COASTAL ZONE MANAGEMENT ACT OF 1972

The Coastal Zone Management Act Amendments of 1976 (Public Law 94-370) were signed into law on July 26, 1976, and were intended to provide federal financial assistance to coastal States likely to be impacted by coastal energy activity.

The Coastal Energy Impact Program (CEIP), which was the major section of the 1976 amendments, is composed of three parts. Planning grants are provided to states if their coastal zones are being, or are likely to be, significantly affected by energy facilities. The 80-percent grants are to be used by the States to study and plan for any economic, social, or environmental consequence which results from the location or operation of energy facilities in the coastal zone.

The second part of CEIP involves loans and bond guarantees to coastal States to assist them in financing public facilities and public services required as a result of coastal energy activity.

The third part, which is the provision reviewed and amended by the committee, is the formula grant section (308(b)). This measure provides grant moneys to coastal States impacted by OCS energy activity.

The Coastal Energy Impact Program, and in particular, the formula grants section, was intended to satisfy the States' requests for a portion of the revenues which accrue to the Federal Government from the sale of leases on the Outer Continental Shelf. The States argued that most of the social, economic, and environmental impacts from OCS development has occurred, and will continue to occur, in the coastal zone of the States.

Despite the enactment of the 1976 Coastal Zone Management Act Amendments, many of the coastal States, whose representatives testified before the committee, continued to express concerns about the need for funds to help finance the public facility, public service, and environmental protection requirements occasioned by OCS energy activity. Witnesses questioned the workability of the CEIP and, in particular, the OCS formula grants, specifically, on six major points:

First the authorization level for the grants was not adequate to provide sufficient funds to impacted States. (The formula grants section is authorized at $50 million per year, from fiscal years 1978–84). Second, the statutory requirement that the grants are to be used to ameliorate the negative impacts from "new or expanded" OCS energy activity precludes the use of the money for present impacts occurring from past or ongoing OCS development. The Gulf of Mexico States felt that this provision discriminated against them because of their long history of involvement in the off-shore oil and gas industry.

Third, the existing CEIP formula, which provides a method for computing each State's share of the total grant money available in a given fiscal year, was confusing and based, in large measure, on the difficult concept of a State's "adjacency" to a lease sale. Because some States, particularly along the North Atlantic coast, have relatively small coastlines but may still be major support areas for OCS development, "adjacency" could be far removed from a determination of

actual impacts. Also, so-called "spillover" effects from OCS development may cover all, or portions of entire regions. Again, this is a particular concern to Atlantic coast States, although it may affect all coastal areas of the nation to some degree. Additionally, it is a problem which many felt would be addressed by the concept of state "adjacency" in the CEIP formula.

Fourth, the overall CEIP formula was directed heavily toward the production phase of OCS development. Only one-third of the formula was weighted for lease sales when a considerable amount of "start-up" costs would be incurred. Frontier States expressed reservations about the formula in this regard and were concerned that the vast proportion of grant moneys would be disbursed to one or two States already heavily involved in the production of offshore oil and gas. Additionally, the criteria on "new employment" has presented problems in acquiring accurate data.

Fifth, the restriction in the formula grant section that States may not use the formula grant money unless moneys in the loans and bond guarantee fund were "unavailable" was seen as particularly onerous.

Finally, the timing and method of disbursing the grant money was a matter of significant dispute. Ambiguity caused many coastal States to feel that the proceeds of the formula grants would not be transmitted to them immediately after the Secretary had made the calculations under the formula.

Witnesses before the committee divided on an approach to resolve these problems. Some argued for a straight revenue-sharing amendment to the Outer Continental Shelf Lands Act, while other argued for modification of the CEIP. The committee decided to amend the CZMA. It felt that a revenue-sharing proposal attached to the Outer Continental Shelf Lands Act, with little or no reference to the planning and management work presently being carried out by coastal States might devastate those coastal management efforts.

The coastal zone management program is at a critical stage nationally and our coastal States should not be encouraged to abandon the strenuous efforts they have made so far to establish balanced management programs for the use of their coastal resources. Only within the framework of a comprehensive management program will Federal OCS funds be utilized in a reasonable and effective manner.

Section 308(b) of the Coastal Zone Management Act was, therefore, amended as follows:

1. The authorization level for formula grants was raised to $125 million for fiscal year 1979–84. The fiscal year 1978 authorization was maintained at the present $50 million figure to keep the amendment within the requirements of section 402(a) of the Congressional Budget and Impoundment Control Act of 1974 (88 Stat. 297, Public Law 93–344).

2. The CEIP formula was changed to one composed of a 50 percent weighted criterion for States adjacent to OCS acreage newly leased and a 50 percent weighted criterion for OCS oil and gas first landed. The first criterion will assist in providing more funds early in the OCS process for planning and management purposes. The second is more directly related to impact and infrastructure needs. The element related to new OCS employment in the existing CEIP was dropped.

3. A 30 percent ceiling on the amount that any single State may

obtain in a fiscal year was established. This ceiling percentage is to be applied to the total amount available to the Secretary for payment under this section in any fiscal year.

4. A 2 percent minimum "floor" for each State in a region of a State which is adjacent to OCS acreage newly leased or is landing OCS oil and gas was established. This provision is intended to address the problem of possible "regional spillover effects". The "floor" is to be applied to those States that may not fulfill either or both of the formula criteria in any fiscal year but which are located in the region of one or more States that do. The regions are broadly defined as Alaska and the Atlantic, Gulf, and Pacific coastal States.

5. A system for the proportional reduction in each State's allotment if sufficient funds are not available in any fiscal year was included. This provision was necessary because the two percent "floor" requirement in the amendment may, under certain circumstances, lead to an inadequate amount of funds being available to provide the full amount to which each State is eligible under the formula. The "proportionate reduction" mechanism provides that, when this situation obtains, each State's share will be reduced in accordance with its proportion of any fiscal year's allotment.

6. The provision that now prevents a coastal State from using its formula grant moneys (for public facilities and services) unless loan and bond guarantee funds are unavailable was deleted. Thus, formula grant money could be used directly and immediately for OCS impacts without reference to the credit assistance section.

7. The present requirement in the formula grant section which stipulates that the moneys may be used for impacts resulting from "new or expanded" OCS energy activity was deleted. Formula grant funds could then be used by State and local governments for past, present, and future OCS-related impacts.

8. The chronological order of disbursing grants to coastal States was clarified. A coastal State would receive its portion of the funds available in any fiscal year after providing the Secretary of Commerce with adequate assurances that it can return any funds which are not expended or committed in accordance with the provisions of the section. Additionally, the grants would have to be spent or committed by the end of the fiscal year following the fiscal year in which the grants were received. After receiving such assurances, the Secretary is directed to disburse the proceeds to eligible coastal States. The States may use these moneys after the Secretary determines that the expenditure or commitment of the funds is in accordance with the requirements of the section. The United States is entitled to recover any moneys not properly expended or committed.

It is the belief of the committee that title IV of H.R. 1614, should result in a better balance in the distribution of formula funds between States presently engaged in OCS development and frontier areas beginning to move into production. It maintains the use of the money within existing coastal management programs of States and is considered a reasonable and balanced response to the needs of coastal States to address OCS-related public facility, public service, and environmental requirements.

TITLE V—MISCELLANEOUS PROVISIONS

Section 501.—Review of Shut-in or Flaring Wells

The committee was concerned about the loss of energy because of shut-in and flaring wells. Section 501 directs the Secretary of the Interior to report to the Comptroller General and to the Congress within 6 months, and in his annual report thereafter, on all shut-in oil and gas wells and all wells flaring natural gas. The Comptroller General is to review and evaluate the methods already used by the Secretary in allowing the wells to be shut in or to flare natural gas. The committee is aware that the Secretary of the Interior and the Federal Power Commission have already collected data on this subject. It is not intended that this work be repeated as long as existing reports contain the information needed by the Comptroller General, and by the Congress.

Section 502.—Review and Revision of Royalty Payments

The committee was concerned that the United States was not getting its fair value for the leasing of its resources in the Outer Continental Shelf, as some lessees have not been promptly paying their royalties. In order to allow review of this problem, section 502 directs the Secretary of the Interior, within 90 days, and annually, thereafter, to submit a report on delinquent royalty accounts and to detail what new procedures including auditing and accounting procedures had been or should be adopted to assure accurate and timely payment of any royalty or net profit share in the future.

Section 503.—Natural Gas Distribution

As indicated in a discussion of the disposition of Federal royalty, net profit share, or purchased oil and gas, the committee was concerned with the serious dislocation of natural gas in the United States. In addition, as indicated in the requirements for new bidding systems, and comments and recommendations to be made by the Attorney General and the Federal Trade Commission as to certain decisions, the committee, was also concerned with the possible lack of competition in the awarding of leases on the Outer Continental Shelf. One way to alleviate both of these problems is to provide procedures and incentives for natural gas distributing companies to bid on, and then explore, develop, and produce Outer Continental Shelf leases.

Testimony presented to the committee indicated that one reason that such companies had not been involved in OCS activities to any large extent was because of regulatory limitations in their States. Specifically, such companies must justify to their State regulators the expenditure of any money for the obtaining of gas. The regulators would not authorize such expenditures if there were not guarantees that the gas obtained through such expenditures would come to geographic areas served by such distributing company. Allocation of interstate gas is determined, through its curtailment and transportation certificate power, by the Federal Power Commission, under the Natural Gas Act; and therefore, permission must be obtained from the Federal Power Commission to allow any natural gas distributing company which finds, and then produces, gas on a lease in the Outer

Continental Shelf to transport such gas to its market. Section 503 requires the Federal Power Commission, or any successor Department or agency with the same regulatory authority, to permit any natural gas distributing company involved in OCS development and production to transport to its service area any gas obtained by such company from its lease. It is intended that this provision would be applicable whether the distribution company directly or indirectly engages in exploration, development and production. Thus, it would apply whether the distribution company itself or a production subsidiary or affiliate of the company does the exploration.

It is the intention of the committee that this mandate to the Federal Power Commission or its successor, shall only effect the gas discovered by a distributor on its lease hold. It is not the committee's intention to effect the general curtailment powers of the Federal Power Commission or its successor. The Federal Power Commission or its successor may, in accordance with its regulations and procedures, determine, through curtailments, the delivery of all natural gas. The only effect of this section would be that the Federal Power Commission or its successor, cannot exercise its curtailment power in any way to preclude the natural gas found by such distributing company on its own lease from being returned to its service region. Such gas may, of course, be counted as part of the amount allocated to such service region by the Federal Power Commission or its successor in any general curtailment process.

Section 504.—Antidiscrimination Provisions

During consideration of the OCS amendments during the 94th Congress, some concern was expressed that several Federal programs designated to assure equal employment and contracting opportunity might not be automatically applicable to activities on the Outer Continental Shelf. To insure that such provisions are applicable to OCS procedures, the committee adopted this section that provides that all agencies responsible for the promulgation and enforcement of regulations relating to the OCS shall take such affirmative action as they deem necessary to assure equal opportunity to all persons. Such equal opportunity must be provided as to all persons. Such equal opportunity must be provided as to all activities associated with exploration, leasing, development, and production and specifically includes employment, bidding and awarding of contracts and subcontracts.

The term "affirmative action" is intended to include the provisions under Executive Order 11296, and to be interpreted like those policies, rules, regulations and orders of the various Federal departments and agencies already implementing that order.

Similarly enforcement of rules as to equal opportunity under this section should be substantially as those that appear in the various provisions and rules of agencies and departments relating to title VI of the Civil Rights Act of 1969 and rules as to appropriate sanctions and penalties for noncompliance should be based on the range and nature of the sanction and penalty provisions applicable under title VI of the Civil Rights Act of 1964.

Section 505.—Sunshine in Government

Currently, Federal agencies and specifically the Department of the Interior require that their employees who are at the GS-15 level or

above and in a decisionmaking position file financial interest statements which are not available to the public. This requirement is not based on any statutory provision but on a 1965 Executive Order, No. 11222 and implementing Civil Service Commission regulations.

The committee was concerned, however, about reports [58] that while progress in implementation has occurred, this order and the implementing regulations are not sufficient and are not adequately enforced.

This section is intended to insure that Department of the Interior require that its employees who are involved with OCS activities file statements regarding any financial interest in any person or company involved in OCS leasing. Penalties are provided for those who fail to comply with this requirement. The section does not prevent Interior employees from having such interests, but rather merely requires that they disclose such interests. These disclosures would be available to the public, and would have to be reviewed by Interior. Interior would provide for appropriate congressional oversight by filing appropriate reports as to the disclosures and their actions as to these disclosures.

The section does not require such reports of every Interior employee. However, the reporting requirement should not be based on the mere grade level of the employee, but rather on the nature of the employee's responsibilities. Thus, positions that are of a nonregulatory or nonpolicymaking nature could be made exempt from the reporting requirement. The requirement does not apply to consultants.

Adequate provision is made in the Section for a determination by Interior as to what "financial interests" are required to be reported.[59]

Section 506.—Investigation of Availability of Oil and Natural Gas From the Outer Continental Shelf

The committee was concerned about the lack of adequate information about the general availability of future supplies of domestic oil and gas resources. Conflicting reports by various Federal agencies, congressional committees, and private groups as to present reserves and potential discoverable resources have made it difficult for Congress to make decisions on the various vital energy issues. A central reserve data gathering authority is believed to be essential.

The committee, while aware of the need for a comprehensive analysis of potential domestic sources of oil and gas, is, of course, limited to provide for procedures related to the OCS. Thus, it adopted a provision for a review and investigation as to potential OCS resources.

This section requires the Secretary of the Interior to conduct a continuing investigation of the availability of the oil and gas resources on the Outer Continental Shelf and to report to Congress within a year of its investigation, and then annually thereafter.

Specifically, this section makes it explicit that the committee has found that despite our urgent need, there is a lack of adequate energy information available, in a coordinated and comprehensive manner, to Congress and the President with respect to crude oil and natural

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[58] General Accounting Office, Report to the Congress, Department of the Interior Improves Its Financial Disclosure System for Employees (December 2, 1975).

[59] On Dec. 17, 1976, the Department of the Interior adopted regulations as to employee responsibility and conduct which provides for reports by employees and defines "known financial interests". These regulations became effective December 23, 1976. 41 Fed. Reg. 56100 to 56132 (December 23, 1976), 43 C.F.R. 20.735-1 to 20.735-51 (1977).

As indicated in the text of the analysis, the requirement of reports is limited to GS-15 and above and violations do not include sanctions other than disciplinary action.

gas resources from the OCS. The committee was concerned that heretofore, data was based almost totally on producer information. The purpose of this section is to require a study of present and potential OCS resources, based on verified, independent data, so as to aid rational decisionmaking as to how to meet possible energy emergencies, and as to establishing energy pricing and conservation policies.

The section requires such an investigation to be made independently by non-oil and gas industry or producers affiliated persons and is to include an independent evaluation of industry and trade association data and a collection of data from other Federal, State, and local agencies. The Secretary of the Interior is to evaluate this data and make an independent estimate of present and potential OCS resources and the effect of these estimates on the ability to substitute energy sources by end use consumers in order to conserve oil and gas and lessen demand. To allow a proper investigation, the Secretary must develop standardized objective criteria for comparison purposes. Specifically, he must make an independent determination of the optimum rates of production—MER (maximum efficient rate) and MPR (maximum production rate).

This section does not require industry data to be submitted company by company, but rather only requires it to be submitted in the aggregate. The section does not involve duplication of efforts. It leaves to the Secretary's discretion the manner in which information is to be gathered and he may rely upon work and data now being performed by other agencies, governments, or organizations, provided he assures the accuracy, independence and credibility of the energy information he reports.

Finally, this section itself does not include any provision for federal exploration. Pre-lease drilling, exploration by contract, and other possible private and public exploration activities were separately considered by the committee in adopting an amended section 11 of the Outer Continental Shelf Lands Act.

Section 507.—State Management Program

On July 26, 1976, amendments to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451) provided for review by those States who have an approved Coastal Zone Management Program of OCS exploration plans and development and production plans, which will affect the land or water use in the coastal zone of such States. Section 307(c)(3)(B); 16 U.S. 1451 (c)(3)(B). Under the procedures established by that Act, any such plan must attach a certification that each activity complies with or is consistent with a State's approved management program. Activities will then only be allowed if the State concurs in the certification, the Secretary of Commerce overrules the State's nonconcurrence, or if the State fails to indicate concurrence or nonconcurrence within 6 months of receipt of the certification.

In adopting procedures as to exploration plans and development and production plans, the committee provided in amended section 11, that the Secretary of the Interior has 30 days after submission of any exploration plan, and in section 25, that the States have 90 days

after receipt of development and production plan, to approve or disapprove plans to bring the Coastal Zone Act in conformity with the 1977 OCS Amendment. The committee amended the Coastal Zone Management Act by providing that States with approved coastal zone management plans will have 90 days to review plans. If they do not respond within that period, then concurrence with the certification of compliance with their plans shall be conclusively presumed.

Section 508.—Relationship to Existing Law

Section 508 provides for consistency of this Act with all other acts, including the Coastal Zone Management Act, the National Environmental Policy Act, and the Mining and Mineral Policy Act, unless expressly provided to the contrary.

The committee was specifically aware of the recent creation of a new Department of Energy, which assumes some of the functions delegated by this Act to the Secretary of the Interior and other Federal officials. As of the date of the committee's ordering of the reporting out of this Act, a conference report on the Department of Energy Organization Act, S. 826 (H.R. No. 95–539), had been filed with both Houses.

The language agreed upon by the conferees with regard to leasing of OCS resources gives the Department of Energy the authority of the Secretary of the Interior to issue regulations which relate:

"(1) fostering of competition for Federal leasing (including, but not limited to, prohibition on bidding for development rights by certain types of joint ventures); (2) implementation of alternative bidding systems authorized for the award of Federal leases; (3) establishment of diligence requirements for operations conducted on Federal leases (including, but not limited to, procedures relating to the granting or ordering by the Secretary of the Interior of suspension of operations or production as they relate to such requirements); (4) setting rates of production for Federal leases; and (5) specifying the procedures, terms and conditions for the acquisition and disposition of Federal royalty interests taken in kind."

In addition, the Department of Energy is given the authority of the Secretary of the Interior to establish production rates for Federal leases, and transfers to it, the authority under Sections 105 and 106 of the Energy Policy and Conservation Act relating to joint ventures and setting of rates of production.

The committee believed it was premature to provide for a transfer of authority either by a general statement or in detail, from the present departments, bureaus, and agencies to the Department of Energy. While the legislation creating a Department of Energy is now law, before the OCS amendments have been adopted, it is, of course, not yet known what changes will be made to this Act by the House of Representatives and then possibly later in a conference prior to final passage. It is the committee's intention to recommend to the House. appropriate language that would conform this Act to the Department of Energy Reorganization Act, or to work with the Senate which has already adopted general conforming language in its OCS bill S. 9, at the time of conference, on incorporating such language.

VII. Cost of the Legislation

Pursuant to clause 7 of the rule XIII of the Rules of the House of Representatives, the committee has estimated the costs of the legislation.

Title I of the bill, "Findings and purposes with respect to managing the resources of the Outer Continental Shelf," involves no implementation costs.

Title II of the bill amends the Outer Continental Shelf Lands Act of 1953. The cost effects of this title of the bill involve implementation costs, including safety regulation and enforcement, costs associated with the vesting of new responsibilities in the Department of Interior; miscellaneous responsibilities on the part of the Department of Justice and the Department of Labor; the establishment of fishermen's gear compensation funds by the Interior Department; and the anticipated short term revenue loss that will accompany experimentation with new bidding systems.

The responsibilities of the Department of Interior include, *inter alia*, the formulation of a 5-year leasing program, the conducting and/or contracting of baseline and monitoring studies, the experimentation and analysis of alternate bidding systems and numerous reporting and other requirements. The additional costs of the new responsibilities required by H.R. 1614 to the Interior Department are estimated at $14.7 million per year.

An increase in the cost of enforcement is anticipated as the level of activity on the OCS increases. In fiscal year 1978, this increase is expected to be about [1] million, primarily for the purchase of new vessels, aircraft, and other enforcement equipment. This includes the participation of the U.S. Coast Guard in safety enforcement and other investigative and reporting activities. In later years, the added costs are only expected to be [1] million per year.

Miscellaneous additional implementation costs are expected to be incurred under title II by the Departments of Justice and Labor. The former agency will review, comment and report on the competitive aspects of development plans and Interior's leasing program. The latter agency, through OSHA will conduct a joint study on the adequacy of safety regulations, promulgate and enforce regulations for occupational safety and health, and other investigative and reporting activities. These miscellaneous additional costs are not expected to exceed $.9 million per year.

The implementation costs for title II are summarized in the following table:

TITLE II.—IMPLEMENTATION COSTS

[In millions of dollars]

	Fiscal year—				
	1978	1979	1980	1981	1982
Interior	64.0	53.0	53.0	15.0	15.0
Coast Guard	(1)	(1)	(1)	(2)	(2)
Miscellaneous (Justice and Labor)	.9	.9	.9	.9	.9
Total	(1)	(1)	(1)	(1)	(1)

[1] Totals not available due to missing Coast Guard input.
[2] Figures not provided by the time this report was filed in the House.

In addition to the implementation costs of this bill, there is a possibility that there may be a loss in revenues in the early years of the implementation of the act, only to be made up in later years.

Section 205 of the bill authorizes the Secretary of the Interior to experiment with the bidding procedures used in granting leases. In addition to the front-end cash bonus method which is the primary bidding method used today, the Secretary is authorized to use other bidding procedures. Some of these other bidding procedures call for payment to the Secretary to be made after production has begun, based on net profits or royalties, rather than as a front-end bonus. Therefore, revenues should be collected by the Secretary in later years rather than at the time of the lease sale.

The Secretary is required to use these alternate bidding procedures on at least fifty percent of the leases in new areas, unless he finds that such a practice would delay the development of the resources or reduce the revenues of the Government. Therefore, the reduction in revenues in early years may be anywhere from 0 percent (if the Secretary continues to use the front-end cash bonus method on 100 percent of the leases) to 100 percent (if the Secretary defers all revenues until later years by using alternate bidding methods on 100 percent of the leases.

Based on the assumption that bidding experimentation would be implemented for the minimum of 50 percent of the leases, resulting in a decrease of about one-half of the bonus revenues of these leases, the Congressional Budget Office (CBO) estimated the short-term revenue loss to the Government through fiscal year 1982 (see the August 5, 1977 communication and cost estimates provided by the Director of the CBO, Alice M. Rivlin). The estimated revenue loss for FY 1978 was put at $375 million.

Section 205 of the bill would also authorize the Secretary of Interior to establish and maintain, at his discretion, a Fishermen's Gear Compensation Fund for any area of the Outer Continental Shelf, as defined by the Secretary. The collection of fees, not to exceed $5,000 per lease annually, for leases issued after the enactment of H.R. 1614, will support the funds at a maximum level of $100,000 per fund. Borrowing authority to a maximum of $1 million from the Treasury for each fund is authorized if funding is insufficient to pay obligations. It is expected that any such fund will be fully supported by lessor fees in the long run. The CBO has projected that the net income from such feels will be less than $500,000 in fiscal year 1978 and approach zero in the following years.

It should be mentioned that section 204, section 5 and section 208, a new section, would impose a contingent liability upon the Federal Government if a lease were cancelled or denied under certain circumstances. It is improbable that any liability for such cancellation would occur in fiscal year 1978. In an April 26, 1976 communication from the Congressional Budget Office, it was estimated that: "This liability could exceed $100 million, and no limit on liability is set in the bill, however, there is a very low probability of occurrence for such an event." (House Rept. No. 94–1084). The Committee concurs with this estimate.

Title III of H.R. 1614 establishes an Off-shore Oil Production Compensation Fund within the Department of Transportation. The fund would be supported by a fee of 3 cents levied per barrel of oil produced on the OCS until it totals at least $100 million. The fund will cover administrative and personnel expenses, cleanup costs, and

other claims under this title. The incidence of claims and cleanup costs is highly unpredictable. For administration of this title, H.R. 1614 authorizes $10 million for fiscal year 1978 and $5 million for each of the two following fiscal years. The appropriation of additional sums as may be necessary to carry out the provisions of the bill is also authorized. Finally, borrowing authority of up to $500 million from the Treasury Department is included to cover necessary expenses.

Title IV amends the Coastal Zone Management Act of 1972 (Section 308(b)) by providing direct grants to states adversely affected by OCS activities in order to ameliorate the impacts of exploration and development. The costs expected to be incurred by this program are summarized by the following table, as provided by NOAA.

TITLE IV. IMPLEMENTATION COSTS

	Millions
Fiscal year 1978:	
Authority	$50
Estimated costs	17.7
Fiscal year 1979:	
Authority	125
Estimated costs	87.5
Fiscal year 1980:	
Authority	125
Estimated costs	102.5
Fiscal year 1981:	
Authority	125
Estimated costs	89.4
Fiscal year 1982:	
Authority	125
Estimated costs	104.4

Title V contains miscellaneous provisions which will not result in any additional implementation costs; except that section 506, which requires that the Secretary conduct an investigation of the availability of oil and natural gas from the Outer Continental Shelf, may entail administrative and other costs. Interior has estimated that this provision may require from $10 million to $15 million for fiscal year 1978.

The total for all implementation costs expected to be incurred as a result of the enactment of this legislation are summarized in the following table:

TOTAL IMPLEMENTATION COSTS

[In millions of dollars]

	Fiscal year—				
	1978	1979	1980	1981	1982
Title I	0	0	0	0	0
Title II	(1)	(1)	(1)	(1)	(1)
Title III	10.0	5.0	5.0	0	0
Title IV	17.7	87.5	102.5	89.4	104.4
Title V	13.0	13.0	13.0	13.0	13.0
Total	(1)	(1)	(1)	(1)	(1)

[1] Totals not available due to missing coast Guard input.

VIII. INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the committee estimates that the enactment of H.R. 1614 would have a net negative inflationary impact on the prices and costs in the national economy. By promoting the development

and production of the oil resources on the Outer Continental Shelf, this bill would increase the domestic supply of petroleum and could potentially cause a decrease in the world price of oil. This potential reduction in the price of oil would be reflected in the prices and costs of virtually all products and services in the national economy, and would thus result in a net negative inflationary impact. On top of that, and even more likely, gas production, particularly off the eastern seaboard, would provide a stabilizing influence on the price of that commodity and would, therefore, exert a retarding inflationary force.

The onshore impacts of OCS development may have localized inflationary effects. Rapid, disorganized development is by its very nature inflationary, because it increases the demand for materials, goods, and services in the economy. The bill, combined with other laws dealing with the impact of energy activity, particularly the Coastal Zone Management Act, would improve the planning capabilities of impacted states and localities, and provide for direct grants to assist this process. Prudent, timely planning on the part of the States would allow for a more manageable growth rate, which can be expected to be less inflationary than might otherwise be the case.

H.R. 1614 in providing for a five year leasing program; a structured legal process to curtail frivolous lawsuits; structured State, local, and citizen input; a more reliable and realistic leasing schedule; greater efficiency in the direction of capital into the active production of the beneficial, near-term energy resources—will: (1) provide reliable time schedules for industry to contract for long lead items at a reasonable pace; (2) create a needed atmosphere of credibility and public confidence regarding our leasing and coastal zone management program; and (3) eliminate unnecessary uncertainties and delays in the system. In this respect, the bill will moderate a multiplicity of inflationary forces.

In addition, by providing for increased domestic energy sources, and thus a potential reduction in the balance of payment deficit, it will enhance public confidence in the dollar, and the economy.

IX. Compliance With Clause 2(1)(3) of Rule XI

With respect to the requirements of clause 2(1)(3) of House Rule XI of the Rules of the House of Representatives—

(A) The Ad Hoc Select Committee on Outer Continental Shelf has no oversight responsibility pursuant to clause 2(b)(1) of rule X, because it is not a standing committee. Furthermore, under the House resolution which created the ad hoc committee. H. Res. 97, no oversight responsibility is delegated to the committee. The committee did, however, hold extensive hearings in the preparation of this legislation, hearing from over 55 witnesses, and compiling a couple of thousand pages of testimony. The major points brought out in this testimony are highlighted in "Need for H.R. 1614."

(B) In the opinion of the committee, no new budget authority or increased tax expenditures, as required in section 308(a) of the Congressional Budget Act of 1974, will result from the enactment of this Act.

(C) The Committee on Government Operations has sent no report to the Ad Hoc Select Committee on Outer Continental Shelf pursuant to clause 2(b)(2) of rule X.

(D) Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared a cost estimate for H.R. 1614. (The cost estimate follows:)

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., August 5, 1977.

Hon. JOHN M. MURPHY,
Chairman, Ad Hoc Committee on the Outer Continental Shelf, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 1614, the Outer Continental Shelf Lands Act Amendments of 1977.

Should the committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE, AUGUST 4, 1977

1. Bill number: H.R. 1614.

2. Bill title: Outer Continental Shelf Lands Act Amendments of 1977.

3. Bill status: As ordered reported on July 27, 1977 by the House Ad Hoc Select Committee on the Outer Continental Shelf.

4. Purpose of bill: The major objectives of this bill are to amend the Outer Continental Shelf Lands Act and establish a policy for the management of Outer Continental Shelf (OCS) oil and natural gas. The bill would protect the marine and coastal environment through the establishment of an offshore oil spill pollution fund, and would provide funds for claims of damages to commercial fishing vessels, gear, or loss of revenue through the establishment of fishermen's gear compensation funds. In addition, the bill would amend the Coastal Zone Management Act of 1972 by providing additional grants to coastal states for the purpose of ameliorating adverse impacts resulting from exploration, development, or production of energy resources.

5. Cost estimate:

[In millions of dollars]

	Fiscal year—				
	1978	1979	1980	1981	1982
(a) Authorization level	60	130	130	125	125
Less: Previous authorization	50	50	50	50	50
Net additional authorization	10	80	80	75	75
(b) Estimated costs	64	40	109	111	113
(c) Estimated revenues:					
Revenue increase	13	13	12	13	14
Revenue losses	375	350	200	175	225
Net revenue loss	362	337	188	162	211
(d) Cost estimate: Estimated costs plus net revenue loss	426	377	297	273	324

6. Basis of estimate:

Title II Amendments to the Outer Continental Shelf Lands Act

This part of the bill would have three cost effects: (1) Implementation costs for enforcement and safety, new responsibilities at the Department of the Interior, and miscellaneous responsibilities at the Department of Justice and the Department of Labor; (2) the establishment of fishermen's gear compensation funds; and (3) revenue loss due to experimental bidding procedures.

Implementation costs

The primary implementation costs are for enforcement, which requires purchases of new vessels, aircraft, and other enforcement equipment. These costs are estimated as follows:

	Estimated costs
Fiscal year:	*Millions*
1978	$54
1979	23
1980	24
1981	26
1982	28

An estimated $2 million in fiscal year 1978, with increases thereafter for inflation, falls in functions 550 and 750, for the Department of Labor and the Department of Justice respectively. An estimated $14 million in fiscal year 1978 falls in function 300. The remainder of the implementation costs fall within budget function 400.

Fishermen's gear compensation fund

Section 205 would authorize the Secretary of the Interior to establish and maintain a Fishermen's Gear Compensation Fund for any area of the Outer Continental Shelf. The funds are to be established at the discretion of the Secretary, and each fund is to be maintained at a level not to exceed $100,000. The funds are to be supported by collection of fees of up to $5,000 per lease per year, for leases issued after enactment of this bill. In addition, each fund is authorized to borrow up to $1 million from the Treasury to lower its obligations. It is anticipated that the Secretary will establish only a small number of funds, and that, over the long term, they will be fully supported by lessor fees. Net income from such fees is projected to be less than $500,000 in fiscal year 1978, and zero thereafter.

Revenue loss

Section 205 of the bill would authorize the Secretary of the Interior to grant leases according to several experimental procedures in addition to the traditional cash bonus bid method. The thrust of this provision is to decrease the front-end cash required so that competition for leases might be increased. The methods used are at the discretion of the Secretary of the Interior, with the only constraint being the use of the non-cash bonus bid fixed royalty method for at least 50 percent of the leases. The assumption is made that the bidding experimentation would be implemented for the minimum 50 percent of the leases and that this would result in a decrease of approximately one-half for the bonus revenues of this 50 percent of the leases. These experimental methods are designed to increase revenues in the production phase of

OCS activity; however, these revenue increases would occur after fiscal year 1982, which is outside the scope of this estimate. The estimated impact of this section during fiscal years 1978–82 is as follows:

Revenue loss (function 950)

Fiscal year:	*Millions*
1978	$375
1979	350
1980	200
1981	175
1982	225

Title III offshore oil spill pollution fund

Title III establishes an Offshore Oil Production Compensation Fund within the Department of Transportation. The Secretary of Transportation and the Secretary of the Treasury would collect a fee of 3 cents per barrel of oil obtained from OCS production until the account totals at least $100 million, which is not projected to occur until after fiscal year 1982.

Money is to be disbursed from the fund for administrative and personnel expenses, cleanup costs, and payment of certain claims. The incidence of such costs is highly unpredictable, and may vary greatly from year to year. In addition, some of the cleanup costs and damage claims are recoverable, though it is not likely that substantial recoveries will be made during the period covered by this estimate. For the purpose of this estimate, it is projected that an average of $10 million per year will be disbursed from the fund for the specified purposes. The bill authorizes the appropriation of $10 million in fiscal year 1978, $5 million in fiscal year 1979, and $5 million in fiscal year 1980 for the administration of this title. It also authorizes the appropriation to the fund of such additional sums as may be necessary to carry out the provisions of this title. In addition, the fund is authorized to borrow up to $500 million from the Treasury to cover its necessary expenses.

The estimated costs and revenues associated with title III are summarized below:

[In millions of dollars]

	Fiscal year—				
	1978	1979	1980	1981	1982
Authorization level	10	5	5		
Estimated revenue	13	13	12	13	14
Estimated costs	10	10	10	10	10
Estimated net revenue	3	3	2	3	4

The costs of this title fall within budget function 300.

Title IV Amendments to the Coastal Zone Management Act

This title would amend the Coastal Zone Management Act of 1972 (specifically section 308(b)) by providing grants to coastal states for the purpose of ameliorating adverse impacts resulting from exploration, development or production of energy resources. The authorization level is that stated in the bill; the net additional authorization is the amount authorized in this bill less the amount previously authorized. Outlays were estimated on the basis of the similar ongoing program.

[In millions of dollars]

	Fiscal year—				
	1978	1979	1980	1981	1982
Authorization level	50	125	125	125	125
Less: Previous authorization	50	50	50	50	50
Net additional authorization	0	75	75	75	75
Estimated costs	0	77	75	75	75

The costs of this title fall within budget function 300.

Net cost by function

The net cost of this bill, by budget function, is summarized in the table below:

[In millions of dollars]

	Fiscal year—				
	1978	1979	1980	1981	1982
Function 300	11	4	73	72	71
Function 400	38	21	21	23	25
Function 950	375	350	200	175	225
Functions 550 and 750	2	2	3	3	3
Total	426	377	297	273	324

7. Estimate comparison: None.

8. Previous CBO estimate: On June 21, 1977, CBO prepared a cost estimate for S. 9, a similar bill, as reported by the Senate Committee on Energy and Natural Resources. In that bill, the estimated revenue loss was based on 33.3 percent experimental leasing requirement that was subsequently changed as the result of floor action to 50 percent.

9. Estimate prepared by: Leslie Wilson.

10. Estimate approved by: —— ——

C. G. NUCKOLS,
for JAMES L. BLUM,
Assistant Director for Budget Analysis.

X. DEPARTMENTAL REPORTS

H.R. 1614 was the subject of reports from the Departments of the Interior, Commerce, Army, the Office of Management and Budget, and Office of Technology Assessment. The reports follow herewith:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 21, 1977.

Hon. JOHN M. MURPHY,
Chairman, Ad Hoc Select Committee on Outer Continental Shelf, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on H.R. 1614, the "Outer Continental Shelf Lands Act Amendments of 1977."

We support the enactment of legislation to amend the Outer Continental Shelf Lands Act subject to the comments set forth below. We strongly believe that both environmental and energy considerations require modernization of the Outer Continental Shelf Lands Act of 1953.

H.R. 1614 seeks to accomplish a number of desirable objectives, including:

Facilitation of exploration and development of the OCS to provide needed additional domestic sources of oil and natural gas;

Enhancement of the opportunity for participation by the Coastal States and other affected regions;

Provision of more specific environmental guidelines for OCS exploration and development;

Enhancement of competition for leases to assure a fair return to the public for its resources.

H.R. 1614 would provide a revised legislative framework for the exploration, development and production of the mineral resources of the Outer Continental Shelf. The bill would:

Provide a comprehensive new leasing program with revised procedures for bidding and lease administration;

Authorize a number of specific bidding systems and require at least one-third of all acreage leased in each frontier area under the new program be leased under the specified systems, other than cash bonus bidding;

Authorize and direct exploratory drilling under Federal contract outside of areas included in the Interior leasing program and require the Department to offer permits for the drilling of on structure wells at least once in each frontier area;

Transfer authority for environmental baseline studies to the Commerce Department;

Provide new rules concerning health, safety and environmental protection;

Establish explicit procedures for enforcement and public participation, including new provisions for citizen lawsuits; and

Establish Coastal State and Regional Advisory Board participation in the leasing and development decisions.

Several provisions of the bill could, however, needlessly impair the efficiency of the OCS program, increase consumer and taxpayer costs, or produce other results not in the public interest. Our major concerns are:

1. Alternative bidding systems.—We concur in the bill's explicit authorization of new bidding systems and agree that substantial leasing should be undertaken to test and develop systems other than the cash-bonus bid system currently in use. We are concerned, however, that H.R. 1614 would not permit experimentation with either new systems not specified by the bill, or variations of systems which are specified.

To allow such flexibility, we recommend the following new subsection be added to section 205 on page 27, line 6: "(I) any modification of bidding systems authorized in (A) through (H) and any other systems of bid variables, terms and conditions which the Secretary determines to be useful to accomplish the purposes and policies of this section."

We are also concerned that sections 8(b)(4) of H.R. 1614 together with sections 8(g) and 9 of the present Act would not permit experimentation with dual leasing systems. For example, one option which is under study in the Department and which may prove useful, is to have the exploratory firms share the costs of drilling under exploration

leases in return for a limited share of the benefits of subsequent development leases. We are reviewing the desirability of authorizing such arrangements and will make a recommendation to the Congress shortly with amendments to carry out any such recommendation.

2. Federally contracted exploration.—We agree that the Department should have the authority to contract for exploratory drilling and should exercise that authority in the national interest. Because of the great potential for government expenditures in OCS exploration, however, it is important to ensure that the new statutory authority include sufficient flexibility for achieving efficient exploration.

To clarify and to make more flexible the authority to contract for exploratory drilling, we recommend the following changes:

Section 206 delete section 11(h) on page 43, and substitute the following: "(h) The Secretary is authorized to contract for exploratory drilling on geological structures which the Secretary determines should be explored by the Federal Government for national security or environmental reasons or for the purpose of expediting efficient exploration, the sale of oil and gas leases, and development."

In addition, the Secretary should be given discretion to seek qualified applicants to conduct geological exploration, rather than be required to do so at least once in each frontier area as provided by new section 11(g) which would be added by § 206 of the bill. To accomplish this, lines 1 and 2 on page 43 should be amended to read: "(g) The Secretary may seek qualified applicants to conduct geological explora-"

3. State and Regional Advisory Board recommendations.—Participation by the States in development and execution of the OCS leasing program is highly desirable. Past arrangements for this participation and Interior response to State and regional concerns have not been satisfactory to the States. In general, the bill's provisions are well designed to remedy this defect.

The bill does, however, require the Secretary to follow recommendations of the Governor of an adjacent state or the Regional Advisory Board, unless they "are not consistent with the national security or the overriding national interest." The provision makes unnecessarily adversary a process which should be as cooperative as possible. Also, unnecessary confusion may result if responsibility for such recommendations is given to both the Governors and Regional Advisory Boards. The Governors, of course, would be free to establish whatever advisory or consultative mechanisms they deem useful and necessary.

We recommend that the Regional Advisory Boards not be specifically authorized by statute and that the Secretary be required to consider the Governor's recommendations in light, not only of the national interest, but also of the well-being of the citizens of affected States. The Secretary should also be required to consult with Governors making recommendations and to inform them, in writing, of the reasons for his decisions. Section 19(d) beginning at line 15 on page 54, therefore should be amended to read:

"(d) (1) Any Governor of any affected State may submit recommendations to the Secretary regarding the size, timing, or location of a proposed lease sale or with respect to a proposed development and production plan.

"(2) Such recommendations shall be submitted within sixty days after notice of such proposed lease sale or receipt of such development and production plan.

"(3) The Secretary shall accept such recommendations if he determines, after having provided the Governor the opportunity for full consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. For the purposes of this subsection, a determination of the national interest shall be based on the desirability of obtaining oil and gas supplies in a balanced manner and on the findings, purposes and policies of this Act. The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State."

Conforming amendments would also be needed to delete Regional Advisory Boards in section 19 and in other sections of the bill where Advisory Boards are mentioned.

4. Cooperative Agreements with affected Coastal States.—We believe clear authority for necessary cooperative agreements between affected Coastal States and the Department is desirable. We, therefore, recommend the addition in section 19, page 55, of the following new subsection (e): "(e) The Secretary is authorized to enter into cooperative agreements with affected Coastal States for purposes which are consistent with this Act, and applicable Federal law. Such agreements may include the sharing of information, the joint utilization of available expertise, the facilitating of permitting procedures, joint planning and review, and the formation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws, regulations and stipulations relevant to OCS operations both on and offshore."

5. Lease cancellation and development plan disapproval for environmental reasons.—We support provisions of the bill authorizing lease cancellation of development plan disapproval because of harm or damage to the environment. When such strong action is taken, however, ing of harm or damage which outweighs the advantages of continued operations as well. We recommend that these provisions be amended to provide that the criteria for cancellation and disapproval be a showing of harm or damage which outweighs the advantages of continued activity. Since disapproval of a development plan can ultimately lead to lease cancellation, the criteria for both decisions should be consistent. Therefore, we recommend the following amendments:

In section 25(g)(1), page 77, delete line 16 through line 3 on page 78, and substitute:

"The Secretary shall disapprove a plan:

"(A) if the lessee fails to demonstrate that he can comply with the requirements of this Act or other applicable Federal law;

"(B) if those activities described in the plan which affect land use and water use of the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal

Zone Management Act of 1972 (16 U.S.C. 1455) are not consistent with such management programs;

"(C) if operations threaten national security or national defense; or

"(D) if in the Secretary's determination, because of exceptional geological conditions in the lease area, exceptional resource values in the marine or coastal environment, or other exceptional circumstances, implementation of the plan would probably cause serious harm or damage to life (including aquatic life), to property, to any mineral deposits in areas leased or not yet leased, or to the marine, coastal or human environments, and if he determines that the threat of harm or damage will not disappear or decrease to an acecptable extent within a reasonable period of time and if he determines that the advantages of disapproving the plan outweigh the advantages of development and production."

In section 204 (Sec. 5(a)(2)), page 20, delete lines 7 through the comma in line 15, and substitute: "(2) for the cancellation of any lease or permit, at any time, when it is determined by the Secretary, after hearing, that continued activity pursuant to such lease or permit would probably cause serious harm or damage life including aquatic life, to property, to any mineral deposits in areas leased or not yet leased, to the national security or defense, or to the marine, coastal or human environments, and if he determines that the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time and if he determines that the advantages of disapproving the plan outweigh the advantages of development and production."

Moreover, to assure that Constitutional compensation requirements are met with respect to leases existing at the date of enactment, we recommend insertion of a proviso on page 21, line 13 and on page 79, line 5, before "reimbursement)" as follows: "*Provided that* with respect to leases issued before the date of enactment of this Act, such compensation shall be equal to the amount specified in item (i) of this sentence."

6. Health and safety regulations.—New sections 21 and 22 (added bv § 206 of the bill) would alter in either an uncertain or an undesirable manner responsibilities for OCS safety and health regulation. For example, they would require the involvement of at least five Federal agencies in the promulgation of regulations and at least three Federal agencies in the enforcement of regulations.

They would also provide that no new safety regulation shall reduce the degree of safety or protection to the environment afforded by safety regulations previously in effect. Environmental regulations frequently must be promulgated on the basis of incomplete information and this provision would not allow revision based on better information, if the revision would reduce the degree of protection afforded. If applied to new regulations, such provisions could discourage the promulgation of desirably strong regulations based on incomplete information. In any event, the fact that the increment of protection provided by existing regulations was extremely costly to the Nation, if that were the case, could not be considered. We recommend that the bill be amended to permit the Secretary to consider

whether the incremental costs of new regulations are justified by additional protection afforded.

We also believe that lessees should be required to use the best available technology which the Secretary determines to be economically achievable for health, safety and environmental protection.

To address these issues, we recommend deleting sections 21 and 22 and substituting the following alternative sections 21 and 22 and conforming amendments:

"SEC. 21. Safety Regulations—

"(a) Upon the date of enactment of this section, the Secretary, the Secretary of Labor, and the Secretary of the Department in which the Coast Guard is operating shall, in consultation with each other and other agency heads as appropriate, promptly commence a study of the adequacy of existing safety regulations, and of the technology, equipment, and techniques available for the exploration, production and development of natural resources, with respect to the Outer Continental Shelf. The results of this study shall be submitted to the President who shall submit a plan of action which he proposes to take to promote safety and health in the exploration, production and development of natural resources of the Outer Continental Shelf.

"(b) In exercising their respective responsibilities for floating, temporarily fixed or permanently fixed structures for the exploration, production and development of the natural resources of the Outer Continental Shelf, the Secretary, and the Secretary of the Department in which the Coast Guard is operating, shall require the use of the best available and safest technology which the Secretary determines to be economically achievable, taking into account the incremental costs and benefits of utilizing such technology, wherever failure of equipment would have a significant effect on safety, health, on the environment, on all new drilling and production operations and, wherever practicable, on existing operations.

"(c) Nothing in this section or in section 22 of this Act shall affect the authority provided by law to the Secretary of Labor for the protection of occupational safety and health, the authority provided by law to the Administrator of the Environmental Protection Agency for the protection of the environment, or the authority provided by law to the Secretary of Transportation with respect to pipeline safety.

"SEC. 22. Enforcement of Environmental and Safety Regulations—

"(a) The Secretary and the Secretary of the Department in which the Coast Guard is operating shall consult with each other regarding the enforcement of environmental and safety regulations promulgated pursuant to this Act, and each may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of any Federal agency, for the enforcement of their respective regulations.

"(b) The Secretary and the Secretary of the Department in which the Coast Guard is operating shall individually, or jointly if they so agree, promulgate regulations to provide for—

"(1) scheduled onsite inspection at least once a year of each facility on the Outer Continental Shelf which is subject to any environmental or safety regulation promulgated pursuant to this Act, which inspection shall include all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents; and

"(2) periodic onsite inspection without advance notice to the operator of such facility to assure compliance with such environmental or safety regulations.

"(c) The Secretary, the Secretary of the Department in which the Coast Guard is operating or their authorized representatives, upon presenting appropriate credentials to the owner or operator of a facility subject to subsection (b), shall be authorized—

"(1) to enter without delay any part of the facility; and

"(2) to examine such documents and records as are pertinent to such an inspection.

"(d)(1) The Secretary or the Secretary of the Department in which the Coast Guard is operating, as applicable, shall make an investigation and public report on each major fire and major oil spillage occurring as a result of operations conducted pursuant to this Act. For the purpose of this subsection, the term 'major oil spillage' means any discharge from a single source of more than two hundred barrels of oil over a period of thirty days or of more than fifty barrels over a single twenty-four hour period. In addition, such Secretary may make an investigation and report of any lesser oil spillage.

"(2) In any investigation conducted pursuant to this subsection, the Secretary of the Department in which the Coast Guard is operating shall have the power to subpoena witnesses and to require the production of books, papers, documents, and any other evidence relating to such investigation."

Section 208 should be further amended, in conformity with the above amendments as follows:

page 66, lines 2 and 3 in section 23(a)(1), strike the present text and insert "his own behalf against any person, including the United"

page 66, lines 10–13, delete section 23(a)(1)(B)

page 66, lines 14–16, delete the present text and insert "(2) No action may be commenced under subsection (a)(1) of this section—"

page 67, lines 3–12, delete section 23(a)(2)(B)

page 70, line 25 in section 24(a), strike the words "Secretary of Labor"

page 71, line 15 in section 24(c), strike the words "Secretary of Labor, the"

page 71, lines 23 and 24 in section 24(c), delete the words "Occupational or public"

7. *Environmental studies and monitoring.*—To assure the most effective management and direction of the OCS program we strongly recommend that baseline study and monitoring responsibilities remain in the Interior Department rather than being transferred to the Department of Commerce. To accomplish this, we recommend deletion in section 20, on page 55, lines 21 and 22 of the words "of Commerce in cooperation with the Secretary," on page 56, lines 9 and 10, the words "of Commerce"; on page 56, lines 13 through 23, subsection (a)(3) in its entirety; on page 57, (b), line 9, the words "of Commerce"; on page 58, line 4, and lines 7 and 8, "of Commerce"; on page 58, (d) lines 12 and 13, the words "of Commerce", and "to the Secretary and". At the end of section 20, the following new subsection should be added: "(f) In executing his responsibilities under this section the Secretary is authorized and directed, to the maximum extent practicable, to enter

into appropriate arrangements to utilize on a reimbursable basis the capabilities of the Department of Commerce. In carrying out such arrangements the Secretary of Commerce is authorized to enter into contracts or grants with any person, organization or entity with funds appropriated to the Secretary of the Interior pursuant to this Act."

8. Clarification of authority for leasing geothermal resources on the OCS.—We believe that authority exists under the present Act, or as it would be amended, to lease geothermal resources on the OCS. However, to avoid possible litigation in the future, we recommend that this opportunity be taken to specifically provide authority for the Secretary to lease geothermal resources on the OCS. The bill should be amended in section 201 so that subsection (a) will read as follows:

(a) Paragraph (c) of section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. Sec. 1331) is amended to read as follows:

"(c) The term 'lease' means any form of authorization which is issued under Section 8 or maintained under Section 6 of this Act and which authorizes exploration for, and development and production of, deposits of oil, gas, or other minerals, including geothermal resources;"

Finally, the Administration is of the view that imposition of conditions of congressional approval, other than by joint resolution, constitutes an improper legislative encroachment upon executive functions.

In addition, there are a limited number of other issues on which we are consulting other agencies within the Administration. Among these are:

Requiring by statute that all pipelines on the Outer Continental Shelf (except gathering lines entirely within the boundaries of a unit) be operated as common carriers;

Assuring effective antitrust review, without unnecessarily delaying leasing;

Establishing joint Federal/State leasing procedures for common goals of oil and gas, which contribute to the conservation of the resource.

Our concerns regarding these issues and possible amendatory language will be made available to the Committee by letter very shortly.

Beyond these matters, we anticipate working with the Committee on secondary problems. There are a number of these other problems for which we will be prepared to suggest amending language. Our intention is to provide a clear framework for balanced use of the Nation's OCS resources. The guidance provided by this legislation to carry out an effective program which can respond to changing needs should be specific without excessive detail or inflexibility.

We are keenly aware that the contribution which the OCS program can make to the Nation's economic health can only be achieved through strong environmental protection, public participation in important decisions, adequate planning and maintenance of a competitive private sector to develop OCS resources.

Safe and efficient development of our OCS resources in the near future is a high priority of this Administration; and, we are firmly committed to the enactment of additional legislation which will result in this end. To accomplish this, we are prepared to build on past efforts and work closely with the Congress, both with respect to the modifica-

tions outlined above and to other improvements that may appear advisable as the Congress considers the measure. More importantly, we will continue that close relationship in implementing an effective program.

The Office of Management and Budget has advised that enactment of legislation conforming to the views set forth above would be in accord with the program of the President and it has no objection to the presentation of this report.

Sincerely,

CECIL D. ANDRUS.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 22, 1977.

Hon. JOHN M. MURPHY,
House of Representatives,
Washington, D.C.

DEAR MR. MURPHY: Thank you for your letter dated March 24 requesting the Department's comment on the conclusions of the study recently released by the American Petroleum Institute. As you stated, the study concludes that S. 9 and H.R. 1614 "are estimated to cause delay in recovering oil and gas from areas as yet unleased, ranging from a very conservative three years to a probable six years." This conclusion is based principally on an analysis of that section of the bills (Sec. 11(g)) which requires on-structure drilling in each frontier area.

On balance, we feel that the conclusions of the study as to delays in production due to the proposed Section 11(g) are overstated in two respects. First, the time needed for drilling exploratory wells prior to leasing should not be counted again as time needed to drill exploratory wells after a lease sale is held. If done properly, it seems quite logical that exploratory work done before leasing will substitute for exploratory work normally required after leasing. Second, it is reasonable to assume that, for lease sales scheduled to take place a year or more after the enactment of Section 11(g) exploration mandates, there will be ample opportunity to accomplish those actions required prior to drilling exploratory wells without adding any more time to the lease sale process. The result of the application of Section 11(g) provisions on the availability of hydrocarbons would, at most, be delays for those lease areas that may be sold within a year or so after the enactment of the amendment. Assuming that a bill is enacted in the early fall, there are possibly four to six such areas where the preparatory process is far enough along to reasonably expect that a sale could take place, and where delays would be encountered due to mandatory on-structure drilling.

The specific activities required under Section 11(g) can be divided into four broad areas: preparation of an exploration plan, requests for bids and awarding of contracts to drill, preparation of environmental assessments and statements, as may be necessary, and drilling of wells. The unique characteristics of an area would determine the exact amount of time needed for each of these four tasks. Generally, the

requests for bids and the preparation of necessary environmental analyses could probably proceed simultaneously. The preparation of an exploration plan would take some months. Drilling wells, while delaying the sale date, should not in the longer term significantly delay production. For planning purposes, a year may well be adequate to comply with Section 11(g) requirements short of drilling wells, that is for planning and contracting for exploration with simultaneous preparation of necessary environmental assessments and statements.

However, I would emphasize that all of the actual and potential delays I have discussed would not necessarily be a burden if the changes proposed by the Administration in my letter to you of March 14, 1977, are adopted. I agree with the underlying concept that we should have a better idea of what we are selling before we sell. But, I also reiterate my belief that sufficient flexibility be maintained to achieve efficient exploration. Necessary exploration can be accomplished in a number of ways, by exploration as is required in Section 11(g), by a leasing system that requires both exploratory leases and development leases, or by other means. We are studying various leasing systems that could accomplish the goals of defining better the resources of the OCS before development rights are issued. Whatever system is used, it seems desirable to retain an ability to choose the procedure that best accomplishes the goals of OCS leasing in each area considered for development.

Looking at the overall problem of delays in the production of OCS oil and gas, I wish to say again that S. 9 and H.R. 1614 will, when enacted, do a great deal to eliminate such delays by vastly improving the relationships between the Federal government, the States and others. Passage of a bill will help us get on with the important task of intelligent, effective and efficient extraction of OCS oil and gas. My recommendations on exploration provisions, as well as the other changes we have suggested, are made with this goal in mind.

Sincerely,

CECIL D. ANDRUS, *Secretary.*

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 10, 1977.

Hon. JOHN M. MURPHY,
Chairman, Ad Hoc Select Committee on the Outer Continental Shelf, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In my letters of March 14, 1977, to the Senate Committee on Energy and Natural Resources, and March 21, 1977, to the House Ad Hoc Select Committee on the Outer Continental Shelf, I indicated that we had a limited number of concerns respecting S. 9 and H.R. 1614 which were not fully addressed in these earlier letters. These concerns are:

1. Authority for option to use dual systems of leasing.—A number of leasing systems are under study by the Department which could enhance competition. Alternatives for increased pre-lease exploration

are also being considered. Among the possibilities being reviewed is a leasing system involving separate leases for exploration and subsequent development and production. In this approach, the Government could issue exploration leases under which exploration firms would manage and conduct exploratory drilling, providing the information obtained to all interested parties. Such exploratory lessees would share the costs of the exploration with the Government in return for a share of the benefits realized when the Government subsequently leases the resources for development and production. This option may prove to be valuable for achieving extensive and efficient exploration, or it may prove not to be valuable. We believe that its potential merit justifies further investigation of it as an option. Our proposed amendment would allow us to do so.

We recommend additional language (italic) be added to the new subsection "(I)" of section 205 on page 27, line 6 which was suggested in the initial letters: "(I) any modification of bidding systems authorized in (A) through (H) and any other systems of bid variables, terms and conditions which the Secretary determines to be useful to accomplish the purposes and policies of this section, *including leasing systems in which exploration lessees share in the costs of exploration and the consideration received from sale of subsequent leases for development and production, notwithstanding any inconsistent provisions of Sec. 8(b)(4), 8(k) and Sec. 9 of this Act, provided that payment shall not exceed amounts appropriated for that purpose by Congress.*"

The definition of lease in section 201(c) of the bill should also be amended as follows: "(c) The term 'lease' means any form of authorization which is issued under section 8 or maintained under section 6 of this Act and which authorizes exploration or exploration for, development or production, or any combination thereof, of deposits of oil, gas, or other minerals including geothermal resources;"

2. Joint Federal/State leasing procedures.—Subsection 205(f) provides that the area within 3 miles of the seaward boundary of a coastal State may be "jointly leased" under mutually agreed terms consistent with the Act. Subsection 205(f)(4) requires that all bonuses, royalties, rents, and net profit shares obtained from leases within 3 miles of the seaward boundary of any coastal State be placed in an escrow account until the Secretary and Governor of the State determine "the proper rate of payments to be deposited in the treasuries of the Federal Government and such coastal State." Under existing law revenues from leasing of the Outer Continental Shelf must be paid into the Federal treasury. However, there are instances in which a part of this revenue may have been derived from oil and gas drained from State land. We believe any loss of resource or revenue by States in such a situation should be remedied. A statutory provision specifically covering this situation would enhance the Federal/State coordination of development in adjacent areas in addition to that provided elsewhere in the amendments. Additionally, it would reduce the likelihood of costly and time-consuming litigation.

We favor a provision which gives coastal States fair and equitable compensation for oil and gas which is produced through wells in the Federal areas adjacent to them, but which is derived from State

lands. We believe, however, that special care must be taken not to undermine the Secretary's fundamental responsibilities under the statute and to be as clear as possible about the process under which the States would seek compensation. Thus, in the substitute subsection we are providing, the references to "joint leasing" have been removed and its principal purpose, compensation for the resource taken from State lands, more clearly brought into focus. Also, recognizing that additional delay in the leasing process is undesirable, the sequence of events leading to a Federal/State agreement has been adjusted. Finally, the authority of the Secretary to make the required payments is clearly delineated.

We recommend, therefore, that subsections 205(f)(2)-(4) be deleted and new subsections (f)(2)-(4) be added as follows:

"(2) After receipt of nominations for any area of the Outer Continental Shelf within three miles of the seaward boundary of any coastal State, the Secretary shall inform the Governor of such coastal State of any such area which the Secretary believes should be given further consideration for leasing and which he concludes, in consultation with the Governor of the coastal State, may contain one or more oil or gas pools or fields underlying both the Outer Continental Shelf and lands subject to State jurisdiction. If the Secretary selects a tract or tracts which may contain one or more oil or gas pools or fields underlying both the Outer Continental Shelf and lands subject to State Jurisdiction the Secretary shall offer the Governor of such coastal State the opportunity to enter into an agreement concerning the disposition of revenues which may be generated by a Federal lease within such area in order to permit their fair and equitable division between the State and Federal Government.

"(3) Within ninety days after the offer by the Secretary pursuant to paragraph (2) of this subsection, the Governor shall elect whether to enter into such agreement and shall notify the Secretary of his decision. If the Governor accepts the offer, the terms of any lease issued shall be consistent with the provisions of this Act, with applicable regulations, and, to the maximum extent practicable, with the applicable laws of the coastal State. If the Governor declines the offer, or if the parties cannot agree to terms concerning the disposition of revenues from such lease (by the time the Secretary determines to offer the area for lease), the Secretary may nevertheless proceed with the leasing of the area.

"(4) Regardless of any other provision of this Act the Secretary shall impound in a separate account in the Federal treasury all bonuses, royalties and other revenues attributable to oil and gas pools underlying both the OCS and submerged lands subject to state jurisdiction until such time as the Secretary and the Governor of such coastal State agree on, or if the Secretary and the Governor of such coastal State cannot agree the United States District Court determines, the fair and equitable disposition of such revenues and any interest which has accrued and on the proper rate of payments to be deposited in the treasuries of the Federal Government and such coastal State.

3. Regulation of OCS pipelines.—Effective administration and orderly development of Outer Continental Shelf oil and gas resources

have been handicapped since inception of the Outer Continental Shelf Lands Act by problems concerning offshore pipelines. The limitation of the Secretary's authority regarding pipelines to matters pertaining to the survey, width and location is inconsistent with the Secretary's authority under section 5(a)(1) of the Act, and it has precluded the Department from effectively regulating offshore pipelines in the interest of conservation and for the prevention of waste.

To correct this deficiency, we recommend that section 5(e) of the Act, in section 204 of the bill, be amended by the deletion "as to the application therefor and the survey, location, and width thereof" on lines 18 to 20 of page 23 of the bill.

4. Antitrust review.—The Department concurs with the objective of enhancing competition in using the oil and gas resources of the Outer Continental Shelf. We are studying leasing procedures which would promote competition. These include new systems of bidding and exploration. Also, in appropriate circumstances the Department would exercise authority under S. 9 and H.R. 1614 to cancel leases in violation of antitrust laws.

Section 205 of the bills would require the Attorney General and the Federal Trade Commission to review individual leases to determine whether any would create or maintain situations inconsistent with the antitrust laws. As the Department of Justice noted in its testimony before the House Select Ad Hoc Committee, it is appropriate that the Attorney General be consulted on general bidding procedures and long-term leasing policy. His advise can insure that award procedures are generally fair and procompetitive and that lease conditions are not used which might create down-stream anticompetitive effects. We endorse this approach and support the language of new section 18(c)(3) and (d), on pages 50 and 51, which implement this.

As the Department of Justice also noted, however, individual review of the large number of OCS leases could place an undue administrative burden upon that Department. Such a review would become a pro forma exercise because of the large number of transactions with relatively small potential for anticompetitive results. Action on such a large number of competitively insignificant transactions would result in a net loss of the Justice Department's enforcement and advisory efforts. For this reason we recommend deletion of section 205 (c) on pages 36, lines 24–25, and 37, lines 1–21.

5. Limitation on export.—The primary purpose of the present export limitation provisions of S. 9 and H.R. 1614—to ensure that OCS oil and gas be retained as domestic U.S. resources—is an important and desirable objective. However, this objective, we believe, can be better achieved by specifically pointing out that the oil and gas produced on the Outer Continental Shelf is subject to the provisions not only of the Export Administration Act, but of section 103 of the Energy Policy and Conservation Act, Public Law 94–163 (EPCA).

Section 103 of EPCA is a comprehensive provision dealing with the domestic use of the full range of energy supplies and related materials and equipment. As to crude oil and natural gas, it requires that there be a "rule prohibiting (their) export * * *," subject to very limited exceptions which are defined in terms similar to the language contained in subsections (b) and (d) of the present bill. Moreover, this

provision of EPCA has been implemented by the Department of Commerce with the understanding that it embodies a very stringent congressional policy to the effect that domestically-produced oil and gas from all areas should be developed for domestic use.

There is no reason to distinguish between U.S. Outer Continental Shelf oil and gas reserves and other domestic reserves for purposes of administering export controls; in fact, the proliferation of separate export control provisions for various domestic reserves is likely to impede the administration of the Export Administration Program.

We recommend, therefore, amending section 208 of the bill by substituting the following for the language now appearing from line 14 of page 91 through line 17 of page 92 of the bill:

"Sec. 28. Limitation on Export. Any oil or gas produced from Outer Continental Shelf shall be subject to the requirements and provisions of the Export Administration Act of 1969 (50 U.S.C. 2401 *et seq.*) and Section 103 of the Energy Policy and Conservation Act (P.L. 94–163)."

6. International Boundary Determination.—H.R. 1614 and S. 9 would amend the OCS Lands Act to require within 1 year the determination and publication of lines which are the seaward projection of state boundaries and would require the President, again within 1 year, to establish procedures for settling outstanding international continental shelf disputes, particularly those with Canada and Mexico.

In testimony before the House Select Ad Hoc Committee, the Department of State made several points regarding this provision. First, the proposed change would require action within an unrealistic time frame. The determination of the projected boundary lines would have to be carefully constructed in accord with international principles respecting delimitation which is applicable to these situations under our domestic law. The technical and legal work required, and the consultations with the states concerned, would be more time-consuming than is allotted by the provision. Second the United States and Mexico do not have a continental shelf boundary dispute. On November 24, 1976, the U.S. and Mexico entered into an agreement on provisional maritime boundaries out to 200 miles in the Gulf of Mexico and the Pacific Ocean. These provisional lateral boundaries will serve until certain technical work can be completed and a formal treaty completed which will be submitted to the Senate for its advice and consent. Finally, the amendments proposed in H.R. 1614 and S. 9 could impinge upon the President's constitutional responsibility for the conduct of foreign affairs, and would place United States boundary negotiators under a severe handicap.

We, therefore, propose deletion of those provisions of section 203 of H.R. 1614 and S. 9 (lines 4–10 on page 16 of H.R. 1614) which would amend section 4(a)(2) of the Outer Continental Shelf Lands Act.

7. Option for applying the provisions of section 25 to the Gulf of Mexico and Santa Barbara Channel.—One of the most significant changes in S. 9 and H.R. 1614 of existing practice is the detailed review and state participation required prior to approval of development and production plans. Approval of these plans will in many cases require preparation of an evironmental impact statement. An EIS would be required, for example, at least once prior to major de-

velopment in any area or region of the OCS. These are addressed in section 25 of the bills. Section 25, however, excludes the Santa Barbara Channel and the Gulf of Mexico from its requirements. We believe the Secretary should have the option, where necessary, of applying the provisions of section 25 in these two areas. The Santa Barbara Channel and the Gulf of Mexico have been well developed within recent years and the purpose for the general exclusion in section 25 is understandable. There may be, however, more areas of the Channel or the Gulf where application of these provisions is advisable. Therefore, we recommend addition of the following language as section 25(k) on page 82: "An oil and gas lease issued or maintained under the provisions of section 25 in these two areas. The Santa Barbara channel shall be subject to the provisions of this section if the Secretary determines, pursuant to regulations prescribed by the Secretary, that the likely environmental or onshore impacts of the development and production of such lease make the application of the provisions of this section in the public interest."

8. Congressional action on waiver of limitation on bonus bidding.— S. 9 and H.R. 1614 permit the Secretary to exceed the 66⅔ limitation on bonus bid offerings in each region in any year after the first year subsequent to enactment if he finds and reports to the Congress that it would unduly delay efficient development, result in less than a fair return to the Government, or result in a reduction of competition, and if either House of the Congress passes a resolution approving the Secretary's finding within 30 days after receipt of his report.

As I indicated in my earlier letters, this Department is firmly committed to substantial use of bidding systems other than the existing cash bonus system. We have concerns, however, with the part of this provision which would require single House resolution.

The Department of Justice has consistently found that legislative provisions such as this single House resolution are an encroachment upon the constitutional responsibilities of the Executive Branch. For this reason we urge that the bill be amended as follows:

Section 205 (Section 8(a)(6)(C)(ii)) line 3, page 31, after the word "limitation" strike the words "if either the Senate or the House of Representatives passes a resolution of approval of the Secretary's finding" and insert in lieu thereof the words "unless the Secretary's finding is disapproved by joint resolution of Congress."

Page 31, line 23 and page 32, line 5, replace the word "approving" by "disapproving".

We again recommend that title III dealing with oil spill liability and compensation be separately considered and that the Administration's proposal sent to the Congress on March 17, 1977, and introduced as S. 1187, or H.R. 3711 amended pursuant to the Administration's comments be enacted.

The Office of Management and Budget has advised that enactment of legislation conforming to the views set forth above and in the earlier letters of March 14 and 21 would be in accord with the program of the President and it has no objection to the presentation of this report.

Sincerely,

CECIL D. ANDRUS, *Secretary.*

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 3, 1977.

Mr. MARTIN BELSKY,
Chief Counsel, Ad Hoc Select Committee on the Outer Continental Shelf, House of Representatives, Washington, D.C.

DEAR MARTY: Enclosed are technical and second order amendments to H.R. 1614, which we hope you will give serious consideration. These amendments reflect concerns of a less substantive nature than those identified in our March 21 and May 10 letters, but they relate to matters which, nevertheless, could cause some problems. By making these known, we hope that appropriate changes in H.R. 1614 or clarifying comments in the record can be made. We would be very happy to explain them and to work with you in any way that would be helpful.

Sincerely,

PETER O. WARD, Jr.,
Assistant Legislative Counsel.

Enclosure.

Page 11.—Subsection 201(K)(2), line 11, and subsection 201(1), line 18.

Subpart (2) of (K) speaks of a discovery of oil or natural gas in "commercial quantities" and subsection 201(1) refers to a discovery of oil, natural gas, or other minerals in "commercial quantities"; section 205(a) speaks of extending a lease for as long thereafter as oil or gas may be produced from its area in "paying quantities". If these terms are intended to define the same thing, or mean the same thing, they should read the same. The existing law uses the words "paying quantities".

Page 15.—Section 203(d), line 20, refers to the "National Labor Relations Act"; it should be followed by the words "as amended".

Page 18.—Section 204, line 24. Change "in" to "of".

Section 204 of S. 9 would amend section 5(a)(1) of the existing OCS Lands Act, which is the section authorizing the Secretary to issue regulations, by substituting the phrase "conservation of natural resources in the Outer Continental Shelf" for the existing phrase "conservation of the natural resources of the Outer Continental Shelf". The existing phrase has been interpreted in *Gulf Oil* v. *Morton*, 493 F. 2d 141 (9th Cir. 1973), as including among the "natural resources of the Outer Continental Shelf" the marine animal and plant life and all other resources listed in the definition of "natural resources" in section 2(c) of the Submerged Lands Act (43 U.S.C. § 1301(e)).

The change in section 204 of the word "of" to "in", especially in light of the *Gulf Oil* decision, could restrict the applicability of regulations "for the prevention of waste and conservation of the natural resources" to those resources beneath the subsoil (largely mineral), excluding those resources above the subsoil (e.g., marine animal and plant life). The effect of such an interpretation could be to overturn established regulations and jurisdictional authority limit the Secretary's power to protect the environment, and to subject the OCS leasing program to wasteful litigation.

Page 18.—The bill changes the language now in § 5(a)(2) of the Act which gives the Secretary authority over natural resources other

than oil and gas and sulphur. In addition, it changes language in section 4(a)(1) of the present law concerning "removal" of resources and substitutes language on "producing" resources. We are concerned that these changes may nullify or call into question current regulations protecting coral reefs issued under authority of the OCSLA (43 CFR 6220). We would prefer that this authority remain in effect unchanged and see no reason for the changes that were made. Specifically, combination of the first two sentences in section 5(a)(1) tends to undermine the idea that these two sentences provide two types of authorities. Accordingly, the placement of a period after the word "provisions" on line 20 of page 18, deletion of the word "and", and capitalization of "[T]he" should clarify this authority.

Page 24.—Line 19, after "assure" insert "not less than". Section 5(f)(2) as now written requires the lessee to produce at a maximum rate which depends on "sound engineering and economic principles" but which also is "without loss of ultimate recovery of oil and gas". There is no necessary reason why the maximum rate which can be sustained without loss of physical recovery should also be the economically optimum rate. Other rates may be economically optimum both from the lessee's and the Nation's point of view. Under some circumstances it may be advantageous to forego some petroleum production in the future in order to get a somewhat lesser amount earlier. The "loss of ultimate recovery" involved is not waste but a cost of changing the time stream of production. That cost, depending on the circumstances, may or may not be worth paying to get the different time stream of production.

The amendment makes the regulated production rate a floor which may be exceeded at the discretion of the lessee.

Page 27.—Section 8(a)(2), lines 11 through 13, strike the remainder of the sentence after the words "lease sale" in line 11. Making the final payment on a deferred cash bonus not later than 5 years or no later than the approval of the development and production plan would under some circumstances provide an incentive to delay the submission of a development and production plan. The amendment makes the final payment due as announced prior to the lease sale but not later than 5 years after the sale.

Page 28.—Section 205(2)(5)(B). This section should not "provide for the cancellation of any lease sale held", but only provide for the nonacceptance of bids on these specific tracts, or the withdrawal of those tracts from the sale, if the tracts don't receive acceptable bids for shares equaling 100 percent.

Page 45.—Section 15(2)(E), line 21, delete "increase" and put in its place the words "insure an adequate". The present language of 15(2)(E) presupposes that supplies to independent refiners and distributors will always need to be increased further.

Page 48.—Section 18(a)(4), lines 21–23.

S. 9 contains a host of newly-defined terms. The definition given to "fair market value" in section 201(c) will serve some purposes of the bill, e.g., valuing oil and gas for royalty oil purposes, but may be ill-fitting for others, e.g., value received for the issuance of an oil and gas, or other mineral, lease.

This section should not lead anyone to think its meaning is applicable to what must be bid to get a lease, or for bid acceptance or

rejection purposes as opposed to what is paid for royalty oil owned by the Government. This confusion is possible in section 18(a)(4) on page 48, lines 21–23. This section should be amended by substituting the phrase "fair market return for the resources leased" for the phrase "fair market value for the oil and gas leased."

Pages 48 and 49.—Section 208(18(b))—Federal Departments (FEA) may now give proprietary data to Interior; this allows us to only get "nonproprietary."

Page 53.—We are concerned also that the Defense classified information which may be furnished to the Secretary of the Interior pursuant to proposed section 18 is not adequately safeguarded against disclosure. This may be corrected by the incorporation of procedures and exemptions of the amended "Freedom of Information Act." It is proposed that this provision be amended by adding a second sentence to the subsection 18(b), (page 53, line 13) as follows: "Data of a classified nature provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the Department or Agency from whom the information is requested."

Page 73.—Section 208(25). On line 5, "issued" should follow the word "lease"and precede the word "or".

Page 75.—Section 208(25). In lines 18 through 22, it states that at least once prior to major development in an area, the Secretary shall declare development and production of certain leases to be a major Federal action. This should be rewritten if the purpose intended is to be obtained. Declaring something to be a major Federal action does not necessarily, as a matter of law, make it a major Federal action. Thus, line 22 could be changed to read: "for the purposes of this section such lease or set of leases are deemed to be a major Federal action."

Page 78.—Section 25(g)(1) requires the Secretary to cancel the lease if he has disapproved a development plan and extended the lease and if the lessee requests cancellation before the expiration of the 5-year period. Under those circumstances the Secretary should have discretion to cancel as requested by the lessee or to allow the 5-year period to continue to run. For example, he may believe that the passage of time within the 5-year period will make an acceptable plan possible. Secretarial discretion will also discourage lessees from trying to force early cancellation by deliberately submitting unacceptable plans. We recommend that on page 78, line 12, insert "in his discretion" after "or", and on page 78, line 20, insert "and operating orders" in the place of "in operating waters".

Page 81.—The existing language seems to require either an environmental impact statement pursuant to NEPA or studies on the environmental effects. The amendment is to make clear that this provision adds no additional requirement beyond those of NEPA. We recommend on page 81, line 3, replace "an" by "any", on page 81, line 4, after "statement" insert "which may be required", and on page 81, line 6, replace "studies" with "any studies which they may deem desirable".

Page 82.—Permittees and lessees are compensated differently for data provided to the Secretary, as the bill is now worded. We do not understand the reason for this distinction. This amendment would make compensation the same for both. On line 19 after "lessee" insert

"or permittee", and line 20 after "lessee" insert "or permittee", on line 23 after "lessee" insert "or permittee", and on line 24 and on page 83, line 1, strike, "or by a permittee."

Page 83.—Further, the information which would be supplied to States under new section 26(b)(1) and (2) of the OCS Act could impose significant new manpower requirements. Not only would we have to supply data, but we would have to process it for the benefit of a State. States should be able to do their own analysis based on raw data or data processed to fit Federal needs.

Page 87.—Section 208(27). Line 19 provides for the sale of royalty oil by competitive bidding, and yet puts a ceiling on what it can be sold for (i.e., not more than its regulated price). Sales of such oil and gas by competitive bidding is new, in the sense it is not now sold by competitive bidding. It would seem that putting a ceiling on the price at which the oil and gas may be sold will frustrate, if not defeat, the competitive sale process since it is conceivable that all bids will be for an amount equal to the regulated price.

Section 27(b)(1) of the bill would amend the Outer Continental Shelf Lands Act to authorize the Secretary of the Interior to "offer to the public and sell by competitive bidding for not more than its regulated price, or if no regulated price applies, not less than fair market value, any part of the oil obtained by the United States as royalty or net profit share oil or purchased by the United States pursuant to section 27(a)(3) of the bill. The OCS Act (43 U.S.C. 1341(b)) now provides that, "In time of war, or when the President shall so prescribe, the United States shall have the right of first refusal to purchase at the market price all or any portion of any minerals produced from the Outer Continental Shelf." It would appear that the new subsection 27(b)(1) creates an ambiguity which could be construed as being inconsistent with the priorities defined in 43 U.S.C. 1341(b). To correct this defect and to make clear that the new subsection would not obviate 43 U.S.C. 1341(b) we recommend that the line 21, page 87, be changed to read as follows: "or (c) purchased under subsection 12(b) of this Act (43 U.S.C. 1341(b))."

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 27, 1977.

Hon. JOHN M. MURPHY,
House of Representatives,
Washington, D.C.

DEAR JOHN: This responds to your questions during our recent conversation concerning the need for underwater inspection of platforms on the Outer Continental Shelf. You were specifically concerned with certain procurement procedures of the U.S. Geological Survey with regard to a proposed inspection program.

In April 1976, an unsolicited proposal was received from Underwater Inspections, Inc. This was followed in August 1976 by a Request for Proposal (RFP) from USGS for competitive contract submissions for the inspection of five offshore production platforms. However, problems were encountered. USGS decided it did not have sufficient

background to evaluate the proposals received, principally because the RFP was not sufficiently detailed as to specifications for platforms to be inspected. In addition, the RFP contained a Department of Labor wage determination that was being protested by diving companies because it contained wage rates that were substantially higher than the then current rate for the Gulf of Mexico. The Geological Survey cancelled the RFP upon the recommendation of the Department of Labor so that a complete economic survey of the area could be conducted to establish reasonable minimum wage rates.

In order to improve its understanding of the costs and technical aspects of underwater inspection of platforms, the Geological Survey has requested the Office of the Supervisor of Salvage, United States Navy, using their contract personnel, to perform diving services. The services would be utilized to inspect the submerged portions of two offshore production platforms. Oceaneering, Inc. is the current Navy contractor and is working under a contract that has existed since 1974. The procedure used is an administrative agreement between USGS and the Navy Department, not a sole source procurement.

There are several advantages to the Department and the taxpayers in using the Navy's diving services contract.

The Navy has agreed to provide onsite technical supervision expertise which USGS does not have.

The Geological Survey can gain valuable experience in diving procedures and cost and technical data.

The costs should be considerably less than those involved in utilizing an RFP since the Navy's contract contains 1974 diving rates.

Inspection could commence within a short time after the go-ahead is given.

The Navy inspection program should be completed within two months from the time we order the go-ahead. At that time, we intend immediately to undertake a thorough examination of the alternative means for assuring the structural integrity of existing platforms. This will complement the program currently being instituted to evaluate the adequacy of new OCS structures. If we conclude that such a program would require the use of diving services by the Government, we will issue an RFP and use full competitive procedures to determine a contractor for the USGS.

I thank you for bringing this important matter to my attention.

Sincerely,

CECIL D. ANDRUS, *Secretary.*

P.S. You will have our sample findings within two months. Then we will look at the possibility of a total program.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 8, 1977.

Hon. JOHN MURPHY,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Outer Continental Shelf (OCS) Advisory Board was established in October 1975 to advise the Secre-

tary and other officers of the Department on the performance of discretionary functions under the OCS Lands Act, including all aspects of exploration and development of OCS resources. The Board handles policy issues and provides interaction with the coastal States.

At the meeting of the Board held on June 28–29, 1977, the members passed a resolution requesting that the Secretary urge Congress to take the earliest possible action on legislation to amend the OCS Lands Act and to provide a comprehensive oil spill liability law. In addition, the Board passed a resolution requesting that the Secretary recommend to Congress legislation giving the Coast Guard authority to resolve potential conflicts of OCS structures and marine traffic. Copies of these resolutions are enclosed for your information.

Sincerely,

HEATHER L. ROSS,
Deputy Assistant Secretary—
Policy, Budget and Administration.

Enclosures.

RESOLUTION IN SUPPORT OF OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS

Whereas, the coastal States and local jurisdictions adjacent to areas that are, or will be, subject to OCS development have routinely and continually supported the need for improvements in the OCS leasing and development process; and

Whereas, such improvements include the need for greater consultation with, and participation by, State and local governments, a more meaningful and definitive role for the OCS Advisory Board, and greater protection for environmental values and resources; and

Whereas, this support has been expressed in a variety of forms; and

Whereas, OCS leasing and development are proceeding at a rapid pace without the needed legislative improvements being made; therefore, be it

Resolved, That the OCS Advisory Board urges the Secretary to urge the United States Congress to take earliest possible action on legislation to amend the Outer Continental Shelf Lands Act to strengthen the role of State and local governments and the OCS Advisory Board in OCS leasing and development decisions, and provide increased protection for environmental values and resources; and be it further

Resolved, That the OCS Advisory Board recommends that the Department of the Interior support and work to achieve early passage of such amendments to the OCS Lands Act.

JUNE 29, 1977.

RESOLUTION IN SUPPORT OF OIL POLLUTION LIABILITY LEGISLATION

Whereas, the transportation, production, and handling of oil in, on, or near inland and ocean waters create environmental risks, and may impair the rights of shoreline property owners and harm the general health and welfare of citizens of the United States: and

Whereas, the damages and costs resulting from oil spills are matters of major national concern; and

Whereas, existing legal rules applicable to oil pollution liability and compensation need to be rationalized and reformed to assure that adequate and timely compensation is available for oil pollution from all sources; Now, therefore, be it

Resolved, That the OCS Advisory Board requests the Secretary to urge the 95th United States Congress to take earliest possible action to enact legislation to provide a comprehensive oil spill liability law; and be it further

Resolved, That the OCS Advisory Board recommends that the Department of the Interior support all efforts to achieve early enactment of comprehensive oil spill liability legislation.

JUNE 29, 1977.

RESOLUTION IN SUPPORT OF COAST GUARD AUTHORITY OVER OCS STRUCTURES IN OR NEAR SHIPPING LANES AND FAIRWAYS

Whereas, there are several Federal agencies with differing and sometimes overlapping responsibilities for actions taking place on the outer continental shelf; and

Whereas, this situation can result in confusion and in decisions which cause potential conflicts between marine traffic and structures located on the outer continental shelf; Now therefore, be it

Resolved, That the OCS Advisory Board recommends to the Secretary of the Interior that he initiate efforts to resolve this potentially hazardous situation by recommending to the Congress legislation giving the U.S. Coast Guard clear authority to resolve such conflicts between Federal agencies over OCS structures in or near shipping lanes or fairways.

JUNE 29, 1977.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., July 27, 1977.

Hon. JOHN M. MURPHY,
House of Representatives,
Washington, D.C.

DEAR MR. MURPHY: I am writing to inform you of our position on the proposed revenue sharing amendments to H.R. 1614 now before the Ad Hoc Select Committee on the OCS.

The Administration cannot support any proposal for OCS-related financial assistance to coastal states that it is not administered through the framework of the Coastal Zone Management Act of 1972, as amended. As Secretary Kreps pointed out in a letter to you dated July 18, 1977, the existing Coastal Energy Impact Program is the most effective means of assisting coastal states and communities with the fiscal and environmental effects of OCS energy activity while preserving the important objective of managing wisely the resources of the coastal zone.

We have already agreed, in a June 28, 1977, letter to Senator Johnston, to accept two major changes in the language of section 308(b)(4)(B) of the Coastal Zone Management Act.

The deletion of the phrase "new or expanded" from section 308(b)(4)(B). This would allow the formula grant funds to be used by states

and local governments for past, present, and future OCS-related impacts. We believe, however, that the use of funds should be limited to activities related to OCS developments.

The elimination of the provision that prevents a state from using the formula grant funds to provide new or improved public facilities and public services unless adequate financing is unavailable under the loan component.

We remain strongly opposed, however, to increasing the authorization level for these formula grants. The existing level appears to be appropriate for meeting the needs of coastal states and communities.

We are also opposed to an earmarking of a fixed amount of OCS revenues which is not subject to the annual appropriations process. We firmly believe the present authority for Federal grant review should be maintained to protect the public interest, but this review can be kept to a minimum.

Sincerely,

JIM MCINTYRE,
(For) BERT LANCE,
Director.

THE SECRETARY OF COMMERCE,
Washington, D.C., July 18, 1977.

Hon. JOHN M. MURPHY,
House of Representatives,
Washington, D.C.

DEAR MR. MURPHY: I am writing to inform you of the position of the Department of Commerce on the revenue sharing amendments proposed for inclusion in H.R. 1614.

The Department of Commerce is charged with administering the Coastal Zone Management Act to assist states in managing and wisely using the many resources of our Nation's valuable coastal area. Accordingly, the Department is committed to assisting coastal states and communities in dealing with adverse fiscal and environmental effects of OCS energy activity. This end can best be accomplished, we believe, within the existing framework of coastal zone management and in particular the Coastal Energy Impact Program (CEIP). Therefore, it would be inconsistent for the Department to support OCS-related financial assistance that is not tied closely to state progress toward coastal zone management programs and the CEIP.

We would be willing, however, to support an amendment modifying Section 308(b)(4)(B) of the Coastal Zone Management Act in a way which would increase the flexibility and usefulness of the CEIP formula grants but which would retain the minimum but necessary Federal review of the CEIP and a close tie to the basic coastal management program.

As you are aware, the Administration has already agreed, in a June 28, 1977, letter from OMB Director Lance to Senator Bennett Johnston, to several substantive changes in Section 308(b)(4)(B). These are:

The deletion of the phrase "new or expanded" from Section 308(b)(4)(B) of the Coastal Zone Management Act of 1972, as amended, which would allow the grant funds to be used by states for public

facilities and public services related to past, present, and future OCS development.

The deletion of the provision that prevents states from using the formula grant funds to provide new or improved public facilities and public services unless adequate financing is unavailable under the loan component of the CEIP.

We believe further that the existing authorization of $50 million per year is a level appropriate to meeting the needs of coastal states and communities, and we cannot support an increase in that level.

As also mentioned in the June 28 Lance letter, we believe that Federal grant review should be retained to protect the public interest. The Department intends that such Federal review will, however, be kept to a minimum.

Sincerely,

JUANITA M. KREPS.

THE SECRETARY OF COMMERCE,
Washington, D.C., August 5, 1977.

Hon. JOHN MURPHY,
Chairman, Ad Hoc Select Committee on the Outer Continental Shelf, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During its recent meeting, the Coastal Zone Management Advisory Committee adopted a resolution concerning pending amendments to the Outer Continental Shelf Lands Act. A copy of the resolution is enclosed.

The members of the Advisory Committee are concerned about amendments which offer financial assistance to coastal states in the form of revenue sharing without the benefit and guidance of an approved coastal zone management program. Some members believe that revenue sharing might encourage unnecessary development in fragile coastal areas. The Committee recommends that a state should be making satisfactory progress toward the development of a coastal management program to be eligible for coastal energy financial assistance. In addition, the Committee recommends maintaining minimal Federal review of the use of this financial assistance.

Thank you once again for considering our views on these matters.

Sincerely,

JUANITA M. KREPS.

Enclosure.

RESOLUTION

(OCS Amendments)

Whereas, The House Ad Hoc Select Committee on the Outer Continental Shelf is now considering amendments to H.R. 1614, the OCS Lands Act Amendments, that would provide financial assistance to coastal states for development projects in coastal areas; and

Whereas, It is the mission and duty of the Coastal Zone Management Advisory Committee to provide comment and guidance on matters affecting the use and proper management of our nation's coasts; and

Whereas, Several proposed amendments to H.R. 1614 would bypass the Coastal Zone Management Program and the Coastal Energy Impact Program in providing funds to coastal states; therefore be it

Resolved, That the Coastal Zone Management Advisory Committee advises the Secretary of Commerce to urge the Ad Hoc Select Committee on the Outer Continental Shelf to reject proposals for financial assistance to coastal states that do not:

(A) Retain a tie to the Coastal Zone Management Program and the Coastal Energy Impact Program, including a requirement that, to remain eligible for this financial assistance, a state must be making satisfactory progress toward the development of a coastal management program; and

(B) Retain minimal Federal review of the use of the financial assistance, including any required environmental review.

Further, It is recommended that the Secretary transmit a copy of this resolution to the Chairman of the Ad Hoc Committee.

Adopted this 15th day of July 1977.

WILLIAM C. BREWER,
Chairman, CZM Advisory Committee.

COASTAL ZONE MANAGEMENT ADVISORY COMMITTEE

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DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D.C., June 6, 1977.

Hon. JOHN W. MURPHY,
House of Representatives,
Washington, D.C.

DEAR MR. MURPHY: I am responding to your letter of May 23, 1977 enclosing a copy of a statement prepared by Captain K. C. Torrens, National President of the Council of American Master Mariners, Inc. The statement concerns the establishment of shipping safety fairways through areas of drilling activity on the Outer Continental Shelf.

By letter of April 26, 1977 we provided guidance to our North Atlantic and New England Division Engineers on the establishment of shipping safety fairways. Captain Torrens was furnished a copy of this guidance and has since expressed his appreciation for the action we have taken. Copies of the pertinent correspondence are enclosed for your information. I have been informed that the North Atlantic Division Engineer has accepted an application to establish shipping safety fairways from Captain Torrens.

We do not feel that there are any questions as to which agencies have jurisdiction for these or related matters on the Outer Continental Shelf and, accordingly, do not have any legislation to recommend. We have established an extensive network of Shipping Safety Fairways in the Gulf of Mexico; a Shipping Safety Fairway at Port Hueneme, California, and proposed Guidelines for exploratory drilling due to

be published in the Federal Register on June 7, 1977. These fairways and guidelines were developed in consultation and cooperation with the U.S. Coast Guard, Bureau of Land Management, State and local governments. We also rely heavily on the input of industry in these matters. I hope that we have answered your questions on this matter.

Sincerely yours,

ALVIN G. ROWE,
Colonel, Corps of Engineers,
Assistant Director of Civil Works Atlantic.

DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D.C., April 26, 1977.

Subject: Establishment of Shipping Safety Fairways in the North Atlantic.

To: Division Engineer, North Atlantic
Division Engineer, New England

1. Reference:

a. DAEN-CWR-L letter "Regulatory Functions—Outer Continental Shelf (OCS) Oil Leases and Corps of Engineers Ocean Policies" dated December 2, 1975.

b. Joint Corps/Coast Guard meeting in New York on January 20, 1976.

2. The purpose of this letter is to provide additional guidance about the establishment of shipping safety fairways in the North Atlantic area. The North Atlantic Division Engineer shall be responsible for the overall coordination in both the North Atlantic and New England Division areas. Contrary to the information informally given earlier about pending legislation which would transfer the responsibility for establishing shipping safety fairways to the Coast Guard, we have been advised that the fairway issue was not included in proposed legislation submitted by an OMB task force.

3. The District Engineers should take a lead agency approach towards the establishment of shipping safety fairways within their respective jurisdictions. There are at least three sets of circumstances in which the fairway issue may arise:

a. Where the Corps identifies a need for a fairway, it falls within our purview to press for its establishment on our own initiative. An outside applicant would not be essential;

b. Where the U.S. Coast Guard devises a traffic separation scheme and requests that we superimpose a fairway;

c. Where a local port authority or similar local entity or organization applies for its establishment.

4. Due to the varying circumstances obtaining in different geographical areas, we do not consider it feasible or practicable to develop national guidelines on fairway establishment at this time. Our policy remains to leave the responsibility for technical development of fairways at the District level. District personnel are more knowledgeable about local conditions and maintain close working contacts with the regional representatives of other Federal agencies and their local and state counterparts.

5. In the event, however, that a decision is imminent to establish shipping safety fairways, we caution you:

a. to ensure that the District Engineers conduct a public interest review of the need for any proposed fairway. Close coordination with the local Coast Guard District, the Bureau of Land Management and industry is imperative;

b. to settle the fairway issue before granting any permits for permanent production structures which might interfere with the viability of possible alternative fairway locations and routings; and

c. to observe the absolute prohibition on permitting permanent or temporary structures within the fairways after their establishment.

6. In the event that you do decide to establish a fairway, you should forward a draft regulation and report describing the development of the case, together with your findings, to OCE for eventual publication in the Federal Register.

7. Mr. Curtis Clark, (DAEN-CWO-N), telephone (202) 693-5070 is available to answer any questions.

For the Chief of Engineers:

DRAKE WILSON,
Brigadier General, USA,
Deputy Director of Civil Works.

MAY 12, 1977.

Mr. K. C. TORRENS,
National President, The Council of American Master Mariners, Inc.,
New York, N.Y.

DEAR MR. TORRENS: Your letter of March 29, 1977 to the Secretary of the Army Clifford L. Alexander, Jr., concerning the establishment of shipping safety fairways in the North Atlantic area has been forwarded to me for reply.

By letter of April 26, 1977, we provided additional guidance to our North Atlantic and New England Division Engineers with regard to the establishment of shipping safety fairways in their areas. A copy of that letter and a referenced policy letter dated December 2, 1975 are inclosed for your information. We are informed that the North Atlantic Division Engineer will be in contact with you in the near future.

We appreciate your concern in this matter.

Sincerely yours,

DRAKE WILSON,
Brigadier General, USA,
Deputy Director of Civil Works.

THE COUNCIL OF AMERICAN MASTER MARINERS INC.,
New York, N.Y., May 25, 1977.

Brig. Gen. DRAKE WILSON, USA
Deputy Director of Civil Works, Department of the Army,
Office of the Chief of Engineers, Washington, D.C.

Re Establishment of Shipping, Safety Fairways, North Atlantic OCS.

DEAR GENERAL WILSON: This is in acknowledgement of your letter of May 12, 1977 and in appreciation for providing direction which can lead to a realistic and timely resolution of a most crucial matter.

We have contacted the North Atlantic Division Engineer with a view to making application for our proposed shipping safety fairways and trust that similar direction will be forthcoming to provide for the area south of Hatteras prior to lease sale No. 43.

Respectfully,

Capt. K. C. TORRENS, *National President.*

CONGRESS OF THE UNITED STATES,
OFFICE OF TECHNOLOGY ASSESSMENT,
Washington, D.C., August 8, 1977.

Hon. JOHN M. MURPHY,
Chairman, Ad Hoc Select Committee on Outer Continental Shelf, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: As requested in your letter of July 15, the OTA Oceans Program staff has compared the present OCS leasing process to changes in this process proposed in H.R. 1614, as reported out by your Committee.

The comparison shows that, with a few exceptions noted below, H.R. 1614 does not add substantially to the time periods presently required for the OCS leasing process. In making this comparison, the OTA staff examined only specifically mandated changes of time for each step in the process. This review does not include an evaluation of how the leasing process might be shortened or lengthened by new rule-making requirements specified in H.R. 1614.

Page 188, line 9. H.R. 1614 specifies that the Governors of affected coastal states have 60 days to respond to a notice of a proposed lease sale. Under the present system, the Governors have 30 days to respond to such notices.

Page 208, line 8. H.R. 1614 specifies that the Governors of affected coastal states have 90 days to respond to development and production plans. Under the present system, the Governors have 60 days to respond to these plans.

The additional time required by H.R. 1614 for these two steps does not appear significant when considered in the context of the six or more years that are now required from the time when an offshore area is first considered to the point when production first begins.

Sincerely,

DANIEL DE SIMONE, *Acting Director.*

XI. CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

OUTER CONTINENTAL SHELF LANDS ACT

(43 U.S.C. 1331–43)

* * * * * * *

SEC. 2. DEFINITIONS.—When used in this Act—

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 31, Eighty-third Congress, first session), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

(b) The term "Secretary" means the Secretary of the Interior;

[(c) The term "mineral lease" means any form of authorization for the exploration for, or development or removal of deposits of, oil, gas, or other minerals; and]

(c) The term "lease" means any form of authorization which is issued under section 8 or maintained under section 6 of this Act and which authorizes exploration, development, or production (or a combination thereof as provided in section 8(b)(4) of this Act) of (1) deposits of oil, gas, or other minerals, or (2) geothermal steam;

(d) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation [.] ;

(e) The term "coastal zone" means the coastal water (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inlands from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act of *1972 (16 U.S.C. 1454 (b)(1));*

(f) The term "affected State" means, with respect to any program, plan, lease, sale, or other activity proposed, conducted, or approved pursuant to the provisions of this Act, any State—

(1) the laws of which are declared, pursuant to section 4(a)(2) of this Act, to be the law of the United States for the portion of the outer Continental Shelf on which such activity is, or is proposed to be, conducted;

(2) which is or is proposed to be directly connected by transportation facilities to any artificial island, installation, or other device referred to in section 4(a)(1) of this Act;

(3) which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the outer Continental Shelf; or

(5) in which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities;

(g) The term "marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the outer Continental Shelf;

(h) The term "coastal environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;

(i) The term "human environment" means the physical, esthetic, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, recreation, air and water, employment, and health of those affected, directly or indirectly, by activities occurring on the outer Continental Shelf;

(j) The term "Governor" means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to this Act;

(k) The term "exploration" means the process of searching for oil, natural gas, or other minerals, or geothermal steam, including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such resources, and (2) any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made, the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production;

(l) The term "development" means those activities which take place following discovery of oil, natural gas, or other minerals, or geothermal steam, in paying quantities, including geophysical activity, drilling, platform construction, pipeline routing, and operation of all on-shore support facilities and which are for the purpose of ultimately producing the resources discovered;

(m) The term "production" means those activities which take place after the successful completion of any means for the removal of resources, including such removal, field operations, transfer of oil, natural gas, or other minerals, or geothermal steam, to shore, operation monitoring, maintenance, and work-over drilling;

(n) The term "antitrust law" means—

(1) the Sherman Act (15 U.S.C. 1 et seq.);

(2) the Clayton Act (15 U.S.C. 12 et seq.);

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

(4) the Wilson Tariff Act (15 U.S.C. 8 et seq.); or

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a);

(o) The term "fair market value" means the value of any oil, gas, or other mineral, or geothermal steam (1) computed at a unit price equivalent to the average unit price at which such mineral or geothermal steam was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to such lease, or (2) if there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which such mineral or geothermal steam was sold pursuant to other leases in the same region of the outer Continental Shelf during such period, or (3) if there were no sales of such mineral or geothermal steam from such region during such period, or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by the Secretary;

(p) The term "major Federal action" means any action or proposal by the Secretary which is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

(q) The term "frontier area" means any area where there has been no development of oil and gas prior to October 1, 1975, and includes the outer Continental Shelf off Southern California, including the Santa Barbara Channel.

[SEC. 3. JURISDICTION OVER OUTER CONTINENTAL SHELF.—(a) It is hereby declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act.

[(b) This Act shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected.]

SEC. 3. NATIONAL POLICY FOR THE OUTER CONTINENTAL SHELF.—It is hereby declared to be the policy of the United States that—

(1) the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act;

(2) this Act shall be construed in such a manner that the character of the waters above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected;

(3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs;

(4) since exploration, development, and production of the mineral resources and geothermal steam of the outer Continental Shelf will have significant impacts on coastal and noncoastal areas of the coastal States, and on other affected States, and, in recognition of the national interest in the effective management of the marine, coastal and human environments—

(A) such States and their affected local governments may require assistance in protecting their coastal zones and other affected areas from any temporary or permanent adverse effects of such impacts; and

(B) such States, and through such States, affected local governments, are entitled to an opportunity to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, mineral resources and geothermal steam of the Outer Continental Shelf;

(5) the rights and responsibilities of all States and, where appropriate, local governments to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized; and

(6) operations on the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.

SEC. 4. LAWS APPLICABLE TO OUTER CONTINENTAL SHELF.—(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands [and fixed structures], *and all installations and other devices permanently or temporarily attached to the seabed*, which may be erected thereon for the purpose of exploring for, developing, [removing, and transporting resources therefrom], *or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources*, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however*, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this Act.

(2) To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this Act are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and [artificial islands and fixed structures erected thereon,] *those artificial islands, installations, and other devices referred to in paragraph (1) of this subsection* which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

[(b) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the outer Continental Shelf, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent State nearest the place where the cause of action arose.]

[(c)] (*b*) With respect to disability or death of an employee resulting from any injury occurring as the result of operations described in subsection (b), compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act. For the purposes of the extension of the provisions of the Longshoremen's and Harbor Workers' Compensation Act under this section—

(1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

[(d)] (*c*) For the purposes of the National Labor Relations Act, as amended, any unfair labor practice, as defined in such Act, occurring upon any artificial island [or fixed structure referred to in subsection (a) shall be deemed to have occurred within the judicial district of the adjacent State nearest the place of location of such island or structure.] , *installation, or other device referred to in subsection* (*a*) *of this section shall be deemed to have occurred within the judicial district of the State, the laws of which apply to such artificial island, installation, or other device pursuant to such subsection, except that until the President determines the areas within which such State laws are applicable, the judicial district shall be that of the State nearest the place of location of such artificial island, installation, or other device.*

[(e)] (*d*) (1) The [head] *Secretary* of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on [the islands and structures referred to in subsection (a)] *the artificial islands, installations, and other devices referred to in subsection* (*a*) or on the waters adjacent thereto, as he may deem necessary.

[(2) The head of the Department in which the Coast Guard is operating may mark for the protection of navigation any such island or structure whenever the owner has failed suitably to mark the same in accordance with regulations issued hereunder, and the owner shall pay the cost thereof. Any person, firm, company, or corporation who shall fail or refuse to obey any of the lawful rules and regulations issued hereunder shall be guilty of a misdemeanor and shall be fined not more than $100 for each offense. Each day during which such violation shall continue shall be considered a new offense.]

(2) The Secretary of the Department in which the Coast Guard is operating may mark for the protection of navigation any artificial island, installation, or other device referred to in subsection (a) whenever the owner has failed suitably to mark such island, installation, or other device in accordance with regulations issued under this Act, and the owner shall pay the cost of such marking.

(3)(A) Any owner or operator of a vessel which is not a vessel of the United States shall, prior to conducting any activity pursuant to this Act or in support of any activity pursuant to this Act within the fishery conservation zone or within fifty miles of any artificial island, installation, or other device referred to in subsection (a) of this section, enter into an agreement pursuant to this paragraph with the Secretary of the Department in which the Coast Guard is operating. Subject to the provisions of subparagraph (B) of this paragraph, such agreement shall provide that such vessel, while engaged in the conduct or support of such activities, shall be subject, in the same manner and to the same extent as a vessel of the United States, to the jurisdiction of such Secretary with respect to the laws of the United States relating to the operation, design, construction, and equipment of vessels, the training of the crews of vessels, and the control of discharges from vessels.

(B) An agreement entered into between the owner or operator of a vessel and the Secretary of the Department in which the Coast Guard is operating pursuant to subparagraph (A) of this paragraph shall provide that such vessel shall not be subject to the jurisdiction of such Secretary with respect to laws relating to vessel design, construction, equipment, and similar matters—

(i) if such vessel is engaged in making an emergency call (as defined by such Secretary) at any artificial island, installation, or other device referred to in subsection (a) of this section; or

(ii) if such vessel is in compliance with standards relating to vessel design, construction, equipment, and similar matters imposed by the country in which such vessel is registered, and such standards are substantially comparable to the standards imposed by such Secretary.

(C) As used in this paragraph—

(i) the term "vessel of the United States" means any vessel, whether or not self-propelled, which is documented under the laws of the United States or registered under the laws of any State;

(ii) the term "support of any activity" includes the transportation of resources from any artificial island, installation, or other device referred to in subsection (a) of this section; and

(iii) the term "fishery conservation zone" means the zone described in section 101 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1811).

[(f)](*e*). The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is hereby extended to [artificial islands and fixed structures located on the outer Continental Shelf] *the artificial islands, installations, and other devices referred to in subsection (a).*

[(g)](*f*). The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and [the artificial islands and fixed structures referred to in subsection (a)] *the artificial islands, installations, and other devices referred to in subsection (a)* or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

[SEC. 5. ADMINISTRATION OF LEASING OF THE OUTER CONTINENTAL SHELF.—(a) (1) The Secretary shall administer the provisions of this Act relating to the leasing of the outer Continental Shelf, and shall prescribe such rules and regulations as may be necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall apply to all operations conducted under a lease issued or maintained under the provisions of this Act. In the enforcement of conservation laws, rules, and regulations the Secretary is authorized to cooperate with the conservation agencies of the adjacent States. Without limiting the generality of the foregoing provisions of this section, the rules and regulations prescribed by the Secretary thereunder may provide for the assignment or relinquishment of leases, for the sale of royalty oil and gas accruing or reserved to the United States at not less than market value, and, in the interest of conservation, for unitization, pooling, drilling agreements, suspension of operations or production, reduction of rentals or royalties, compensatory royalty agreements, subsurface storage of oil or gas in any of said submerged lands, and drilling or other easements necessary for operations or production.

[(2) Any person who knowingly and willfully violates any rule or regulation prescribed by the Secretary for the prevention of waste, the conservation of the natural resources, or the protection of correlative rights shall be deemed guilty of a misdemeanor and punishable by a fine of not more than $2,000 or by imprisonment for not more than six months, or by both such fine and imprisonment, and each day of violation shall be deemed to be a separate offense. The issuance and continuance in effect of any lease, or of any extension, renewal, or replacement of any lease under the provisions of this Act shall be conditioned upon compliance with the regulations issued under this Act and in force and effect on the date of the issuance of the lease if the lease is issued under the provisions of section 8 hereof, or with the regulations issued under the provisions of section 6(b), clause (2), hereof if the lease is maintained under the provisions of section 6 hereof.

[(b) (1) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this Act, or of the lease, or of the

regulations issued under this Act and in force and effect on the date of the issuance of the lease if the lease is issued under the provisions of section 8 hereof, or of the regulations issued under the provisions of section 6(b), clause (2), hereof, if the lease is maintained under the provisions of section 6 hereof, such lease may be canceled by the Secretary, subject to the right of judicial review as provided in section 8(j), if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at his record post office address.

[(2) Whenever the owner of any producing lease fails to comply with any of the provisions of this Act, or of the lease, or of the regulations issued under this Act and in force and effect on the date of the issuance of the lease if the lease is issued under the provisions of section 8 hereof, or of the regulations issued under the provisions of section 6(b), clause (2), hereof, if the lease is maintained under the provisions of section 6 hereof, such lease may be forfeited and canceled by an appropriate proceeding in any United States district court having jurisdiction under the provisions of section 4(b) of this Act.

[(c) Rights-of-way through the submerged lands of the outer Continental Shelf, whether or not such lands are included in a lease maintained or issued pursuant to this Act, may be granted by the Secretary for pipeline purposes for the transportation of oil, natural gas, sulphur, or other mineral under such regulations and upon such conditions as to the application therefor and the survey, location and width thereof as may be prescribed by the Secretary, and upon the express condition that such oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from said submerged lands in the vicinity of the pipeline in such proportionate amounts as the Federal Power Commission, in the case of gas, and the Interstate Commerce Commmission, in the case of oil, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste. Failure to comply with the provisions of this section or the regulations and conditions prescribed thereunder shall be ground for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States district court having jurisdiction under the provisions of section 4(b) of this Act.]

Sec. 5. Administration of Leasing of the Outer Continental Shelf.—(a) The Secretary shall administer the provisions of this Act relating to the leasing in the outer Continental Shelf and shall prescribe or retain such regulations as necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein. Except as provided in this subsection, such regulations shall, as of the date of their promulgation, apply to all operations conducted under any lease issued or maintained under the provisions of this Act and shall be in furtherance of the policies of this Act. No regulation promulgated under this Act affecting operations commenced on an existing lease before the effective date of such

regulation shall impose any additional requirements which would result in undue delays in the exploration, development, or production of resources unless the Secretary makes a finding that such regulation is necessary to prevent serious or irreparable harm or damage to health, life, property, any mineral deposits or geothermal steam resources, or to the marine, coastal, or human environment. The finding shall be final and shall not be reviewable unless arbitrary or capricious. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary shall cooperate with the relevant departments and agencies of the Federal Government and of the affected States. In the formulation and promulgation of regulations, the Secretary shall request and give due consideration to the views of the Attorney General and the Federal Trade Commission with respect to matters which may affect competition. The regulations prescribed by the Secretary under this subsection shall include, but not be limited to, provisions—

(1) for the suspension or temporary prohibition of any operation or activity, including production, pursuant to any lease or permit (A) at the request of a lessee, in the national interest, to facilitate proper development of a lease, or to allow for the unavailability of transportation facilities, or (B) if there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits or geothermal steam resources (in areas leased or not leased), or to the marine, coastal, or human environment, and for the extension of any permit or lease affected by such suspension or prohibition by a period equivalent to the period of such suspension or prohibition, except that no permit or lease shall be so extended when such suspension or prohibition is the result of gross negligence or willful violation of such lease or permit, or of regulations issued concerning such lease or permit;

(2) with respect to cancellation of any lease or permit—

(A) that such cancellation may occur at any time, if the Secretary determines, after a hearing, that—

(i) continued activity pursuant to such lease or permit would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits or geothermal steam resources (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environments;

(ii) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) the advantages of cancellation outweigh the advantages of continuing such lease or permit in force;

(B) that such cancellation shall—

(i) not occur unless and until operations under such lease or permit have been under suspension or temporary prohibition by the Secretary (with due extension of any lease or permit term) for a total period of five years or for a lesser period, in the Secretary's discretion, upon request of the lessee or permittee;

(*ii*) *in the case of a lease issued after the date of the enactment of this paragraph (other than a lease cancelled for reasons of national security or defense), entitle the lessee to receive such compensation as he shows to the Secretary as being equal to the lesser of (I) the fair value of the cancelled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, in the case of an oil spill, and all other costs reasonably anticipated on such lease, or (II) the excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to the date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from the date of payment to the date of reimbursement); and*

(*iii*) *in the case of a lease issued before the date of the enactment of this paragraph, or a lease cancelled for reasons of national security or defense (whenever issued), entitle the lessee to receive fair value in accordance with subclause (I) of subclause (ii) of this subparagraph;*

(*3*) *for the assignment or relinquishment of a lease;*

(*4*) *for unitization, pooling, and drilling agreements;*

(*5*) *for the subsurface storage of oil and gas other than by the Federal Government;*

(*6*) *for drilling or easements necessary for exploration, development, and production;*

(*7*) *for the prompt and efficient exploration and development of a lease area;*

(*8*) *for compliance with any standards established by a State pursuant to the Clean Air Act to the extent that activities authorized under this Act affect the air quality of such State; and*

(*9*) *for the establishment of air quality standards for operations on the outer Continental Shelf under this Act.*

(*b*) *The issuance and continuance in effect of any lease, or of any extension, renewal, or replacement of any lease, under the provisions of this Act shall be conditioned upon compliance with the regulations issued under this Act if the lease is issued under the provisions of section 8 hereof, or with the regulations issued under the provisions of section 6(b), clause (2), hereof, if the lease is maintained under the provisions of section 6 hereof.*

(*c*) *Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this Act, or of the lease, or of the regulations issued under this Act if the lease is issued under the provisions of section 8 hereof, or of the regulations issued under the provisions of section 6(b), clause (2), hereof, if the lease is maintained under the provision of section 6 hereof, such lease may be canceled by the Secretary, subject to the right of judicial review as provided in this Act,*

if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at his record post office address.

(d) Whenever the owner of any producing lease fails to comply with any of the provisions of this Act, or of the lease, or of the regulations issued under this Act if the lease is issued under the provisions of section 8 hereof, or of the regulations issued under the provisions of section 6(b), clause (2), hereof, if the lease is maintained under the provisions of section 6 hereof, such lease may be forfeited and canceled by an appropriate proceeding in any United States district court having jurisdiction under the provisions of this Act.

(e) Rights-of-way through the submerged lands of the outer Continental Shelf, whether or not such lands are included in a lease maintained or issued pursuant to this Act, may be granted by the Secretary for pipeline purposes for the transportation of oil, natural gas, sulfur, or other mineral, or geothermal steam, under such regulations and upon such conditions as may be prescribed by the Secretary, or where appropriate the Secretary of Transportation, including (as provided in section 21(b) of this Act) utilization of the best available and safest technology for pipeline burial, shrouding, and other procedures, and upon the express condition that such oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from such lands in the vicinity of the pipeline in such proportionate amounts as the Federal Power Commission, in the case of gas, and the Interstate Commerce Commission, in consultation with the Administrator of the Federal Energy Administration, in the case of oil, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste. Failure to comply with the provisions of this section or the regulations and conditions prescribed under this section shall be ground for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any district court of the United States having jurisdiction under the provisions of this Act.

(f)(1) The lessee shall produce any oil or gas, or both, obtained pursuant to an approved development and production plan, at rates consistent with any rule or order issued by the President in accordance with any provision of law.

(2) If no rule or order referred to in paragraph (1) has been issued, the lessee shall produce such oil or gas, or both, at rates consistent with any regulation promulgated by the Secretary which is to assure the maximum rate of production which may be sustained without loss of ultimate recovery of oil or gas, or both, under sound engineering and economic principles, and which is safe for the duration of the activity covered by the approved plan. The Secretary may permit the lessee to vary such rates if he finds that such variance is necessary.

(g)(1) In administering the provisions of this Act, the Secretary shall coordinate the activities of any Federal department or agency having authority to issue any license, lease, or permit to engage in any activity related to the exploration, development, or production of oil or gas from the outer Continental Shelf for purposes of assuring that, to the maximum extent practicable, inconsistent or duplicative require-

ments are not imposed upon any applicant for, or holder of, any such license, lease, or permit.

(2) The head of any Federal department or agency who takes any action which has a direct and significant effect on the outer Continental Shelf or its development shall promptly notify the Secretary of such action and the Secretary shall thereafter notify and consult with the Governor of any affected State and the Secretary may thereafter recommend such change or changes in such action as are considered appropriate.

(h) After the date of enactment of this section, no holder of any oil and gas lease issued or maintained pursuant to this Act shall be permitted to flare natural gas from any well unless the Secretary finds that there is no practicable way to complete production of such gas, or that such flaring is necessary to alleviate a temporary emergency situation or to conduct testing or work-over operations.

* * * * * * *

SEC. 8. LEASING OF OUTER CONTINENTAL SHELF.—[(a) In order to meet the urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the highest responsible qualified bidder by competitive bidding under regulations promulgated in advance, oil and gas leases on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. The bidding shall be (1) by sealed bids, and (2) at the discretion of the Secretary, on the basis of a cash bonus with a royalty fixed by the Secretary at not less than 12½ per centum in amount or value of the production saved, removed or sold, or on the basis of royalty, but at not less than the per centum above mentioned, with a cash bonus fixed by the Secretary.

[(b) An oil and gas lease issued by the Secretary pursuant to this section shall (1) cover a compact area not exceeding five thousand seven hundred and sixty acres, as the Secretary may determine, (2) be for a period of five years and as long thereafter as oil or gas may be produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon, (3) require the payment of a royalty of not less than 12½ per centum, in the amount or value of the production saved, removed, or sold from the lease, and (4) contain such rental provisions and such other terms and provisions as the Secretary may prescribe at the time of offering the area for lease.]

(a) (1) The Secretary is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding, under regulations promulgated in advance, an oil and gas lease on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. The bidding shall be by sealed bid and, at the discretion of the Secretary, on the basis of—

(A) cash bonus bid with a royalty at not less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold;

(B) variable royalty bid based on a per centum of the production saved, removed, or sold, with a cash bonus as determined by the Secretary;

(C) cash bonus bid with diminishing or sliding royalty based on such formulae as the Secretary shall determine as equitable to encourage continued production from the lease area as resources diminish, but not less than 12½ per centum at the beginning of the lease period in amount or value of the production saved, removed, or sold;

(D) cash bonus bid with a fixed share of the net profits of not less than 30 per centum to be derived from the production of oil and gas from the lease area;

(E) fixed cash bonus with the net profit share reserved as the bid variable;

(F) cash bonus bid with a royalty at not less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold and a per centum share of net profits of not less than 30 per centum to be derived from the production of oil and gas from the lease area;

(G) fixed cash bonus of not less than sixty-two dollars per hectare with a work commitment stated in a dollar amount as the bid variable;

(H) a fixed royalty at not less than 12½ per centum in amount or value of the production saved, removed, or sold, or a fixed per centum share of net profits of not less than 30 per centum to be derived from the production of oil and gas from the lease area, with a work commitment stated in a dollar amount as the bid variable;

(I) a fixed cash bonus of not less than sixty-two dollars per hectare, with a fixed royalty of not less than 12½ per centum in amount or value of the production saved, removed or sold, or a fixed per centum share of net profits of not less than 30 per centum to be derived from the production of oil and gas from the lease area with a work commitment stated in dollar amounts as the bid variable; or

(J) any modification of bidding systems authorized in subparagraphs (A) through (I) of this paragraph and any other systems of bid variables, terms, and conditions which the Secretary determines to be useful to accomplish the purposes and policies of this section, including leasing systems in which exploration lessees share in the costs of exploration and the consideration received from sale of subsequent leases for development and production, notwithstanding any inconsistent provisions of section 8(b)(4), 8(k), and 9 of this Act, except any payment in connection with any bidding system authorized pursuant to this subparagraph payment shall not exceed amounts appropriated for that purpose by Congress.

(2) The Secretary may, in his discretion, defer any part of the payment of the cash bonus, as authorized in paragraph (1) of this subsection, according to a schedule announced at the time of the announcement of the lease sale, but such payment shall be made in total no later than five years from the date of the lease sale.

(3) The Secretary may, in order to promote increased production on the lease area, through direct, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease for such area.

(4)(A) Before utilizing any bidding system authorized in subparagraphs (C) through (J) of paragraph (1), the Secretary shall establish such system in accordance with this paragraph.

(B) The establishment by the Secretary of any bidding system pursuant to subparagraph (A) of this paragraph shall be by rule on the record after an opportunity for an agency hearing. Any modification by the Secretary of any such bidding system shall be by rule.

(C) Not later than thirty days before the effective date of any rule prescribed under subparagraph (B) of this paragraph, the Secretary shall transmit such rule to Congress.

(5)(A) The Secretary shall utilize the bidding alternatives from among those authorized by this subsection, in accordance with subparagraphs (B) and (C) of this paragraph, so as to accomplish the purposes and policies of this Act, including (i) providing a fair return to the Federal Government, (ii) increasing competition, (iii) assuring competent and safe operations, (iv) avoiding undue speculation, (v) avoiding unnecessary delays in exploration, development, and production, (vi) discovering and recovering oil and gas, (vii) developing new oil and gas resources in an efficient and timely manner, and (viii) limiting administrative burdens on government and industry. In order to select a bid to accomplish these purposes and policies, the Secretary may, in his discretion, require each bidder to submit bids for any area of the outer Continental Shelf in accordance with more than one of the bidding alternatives set forth in paragraph (1) of this subsection.

(B) During the five-year period commencing on the date of enactment of this subsection, the Secretary may, in order to obtain statistical information to determine which bidding alternatives will best accomplish the purposes and policies of this Act, require each bidder to submit bids for any area of the outer Continental Shelf in accordance with more than one of the bidding systems set forth in paragraph (1) of this subsection. For such statistical purposes, leases may be awarded using a bidding alternative selected at random or determined by the Secretary to be desirable for the acquisition of valid statistical data and otherwise consistent with the provisions of this Act.

(C)(i) Except as provided in clause (ii), the bidding system authorized by subparagraph (A) of paragraph (1) of this subsection shall not be applied to more than 50 per centum of the total area offered for lease each year, during the five-year period beginning on the date of enactment of this subsection, in each region in a frontier area. The Secretary shall define such regions of the outer Continental Shelf. For purposes of this subparagraph, in calculating the total area offered for lease each year in accordance with the bidding systems authorized by such paragraph (A), the Secretary shall not take into account any area offered for lease in accordance with such bidding system if the lease for such area is offered in accordance with the terms set forth in subsection (b)(4)(B) of this section.

(ii) If, during the first year following the date of enactment of this subsection, the Secretary finds that compliance with the limitation set forth in clause (i) would unduly delay development of the oil and gas resources of the outer Continental Shelf, he may exceed that limitation after he submits to the Senate and the House of Representatives a report stating his finding and the reasons therefor. If, in any other year following the date of enactment of this subsection, the Secretary finds that compliance with the limitation set forth in clause (i) would unduly delay efficient development of the oil and gas resources of the outer Continental Shelf, result in less than a fair return to the Federal Government, or result in a reduction of competition, he shall submit to the Senate and House of Representatives a report stating his specific findings and detailed reasons therefor. The Secretary may thereafter, for that year, exceed such limitation unless either the Senate or the House of Representatives passes a resolution of disapproval of the Secretary's finding within sixty days after receipt of such report (not including days when Congress is not in session).

(iii) Clauses (iv) through (xi) of this subparagraph are enacted by Congress—

(I) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the Rules of each House, respectively, but they are applicable only with respect to the procedures to be followed in that House in the case of resolutions described by this subparagraph, and they supersede other Rules only to the extent that they are inconsistent therewith; and

(II) with full recognition of the constitutional right of either House to change the Rules (so far relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other Rule of that House.

(iv) A resolution disapproving a proposal of the Secretary shall immediately be referred to a committee (and all resolutions with respect to the same proposal shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(v) If the committee, to which has been referred any resolution disapproving a proposal of the Secretary has not reported the resolution at the end of ten calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution with respect to the same proposal which has been referred to the committee.

(vi) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same recommendation), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(vii) If the motion to discharge is agreed to, or disagreed to, the motion may not be renewed, nor may another motion to discharge

the committee be made with respect to any other resolution with respect to the same proposal.

(viii) When the committee has reported, or has been discharged from further consideration of, a resolution as provided, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(ix) Debate on the resolution is limited to not more than two hours, to be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(x) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution with respect to a proposal, and motions to proceed to the consideration of other business, shall be decided without debate.

(xi) Appeals from the decisions of the Chair relating to the application of the Rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a request shall be decided without debate.

(D) Within six months after the end of each fiscal year, the Secretary shall report to the Congress, as provided in section 15 of this Act, with respect to the use of the various bidding options provided for in this subsection. Such report shall include—

(i) the schedule of all lease sales held during such year and the bidding system or systems utilized;

(ii) the schedule of all lease sales to be held the following year and the bidding systems or systems to be utilized;

(iii) the benefits and costs associated with conducting lease sales using the various bidding systems;

(iv) if applicable, the reasons why a particular bidding system has not been or will not be utilized;

(v) if applicable, the reasons why more than 50 per centum of the area leased in the past year, or to be offered for lease in the upcoming year, was or is to be leased under the bidding system authorized by subparagraph (A) of paragraph (1) of this subsection; and

(vi) an analysis of the capability of each bidding system to accomplish the purposes and policies stated in subparagraph (A) of this paragraph.

(6)(A) In any lease sale where the bidding system authorized by subparagraph (A) of paragraph (1) of this subsection and any one or more of the bidding systems authorized by subparagraphs (B) through (J) of paragraph (1) of this subsection are to be used, the Secretary shall publicly choose, by a random selection method, those tracts which are to be offered under the bidding system authorized by such subparagraph (A) and those which are to be offered under one or more of the bidding systems authorized by such subparagraphs (B) through (J).

(B) The selection of tracts under this paragraph shall occur after receipt by the Secretary of public nominations of lease tracts to be included in a proposed lease sale, but before the initial announcement of the tracts selected for inclusion in such proposed lease sale.

(C) Before selection of tracts for inclusion in the proposed lease sale the Secretary shall publish a notice in the Federal Register describing the random selection method to be used and shall, immediately after such selection, publish a notice in the Federal Register designating the lease tracts selected which are to be offered under the bidding system authorized by subparagraph (A) of paragraph (1) and the lease tracts selected which are to be offered under any one or more of the bidding systems authorized by subparagraphs (B) through (J) of paragraph (1).

(D) The Secretary may exclude a tract from the use of a random selection technique under this paragraph if, after receipt by the Secretary of public nominations of lease tracts to be included in a proposed lease sale, the Secretary makes a finding that use of such technique would unduly delay or hinder exploration, development, and production of oil and gas, or prevent the receipt of fair return for the lease.

(7) The Secretary may, by regulation, permit submission of bids made jointly by or on behalf of two or more persons for an oil and gas lease under this Act unless more than one of the joint bidders, directly or undirectly, controls or is chargeable worldwide with an average daily production of one million six hundred thousand barrels a day or more, or the equivalent, in crude oil, natural gas, and liquefied petroleum products.

(b) An oil and gas lease issued pursuant to this section shall—

(1) be for a tract consisting of a compact area not exceeding five thousand seven hundred and sixty acres, as the Secretary may determine, unless the Secretary finds that a larger area is necessary to comprise a reasonable economic production unit;

(2) be for an initial period of—

(A) five years; or

(B) not to exceed ten years where the Secretary finds that such longer period is necessary to encourage exploration and development in areas of unusually deep water or unusually adverse weather conditions,

and as long after such initial period as oil or gas may be produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon;

(3) require the payment of amount or value as determined by one of the bidding procedures systems set forth in subsection (a) of this section;

(4)(A) entitle the lessee to explore, develop, and produce oil and gas resources contained within the lease area, conditioned upon due diligent requirements and the approval of the development and production plan required by this Act; or

(B) entitle the lessee to explore, or develop and produce, the oil and gas resources within all or any part of the lease area, unless within sixty days after the date of the submission by the Secretary to the Congress of a proposal to award one or more leases,

in a specific lease sale in accordance with this subparagraph (not including days when Congress is not in session), the Senate and the House of Representatives pass a joint resolution disapproving such proposal, in accordance with the procedures described in clauses (iii) through (xi) of subsection (a)(5)(C) of this section;

(5) provide for suspension or cancellation of the lease during the initial lease term or thereafter pursuant to section 5 of this Act;

(6) contain such rental and other provisions as the Secretary may prescribe at the time of offering the area for lease; and

(7) provide a requirement that the lessee offer 20 per centum of the crude oil, condensate, and natural gas liquids produced from such lease, at the market value and point of delivery applicable to Federal royalty oil, to small or independent refiners as defined in the Emergency Petroleum Allocation Act of 1973.

(c) No lease may be issued if the Secretary finds that an applicant for a lease, or a lessee, is not meeting due diligence requirements on other leases. Innocent or nonnegligent parties to any joint lease which is cancelled due to the failure of one or more partners to exercise due diligence on other leases may seek damages for such loss from the responsible partner or partners.

(d) No lease issued under this Act may be sold, exchanged, assigned, or otherwise transferred except with the approval of, and subject to renegotiation by, the Secretary. Prior to any such approval, the Secretary shall consult with and give due consideration to the views of the Attorney General and the Federal Trade Commission.

(e) Nothing in this Act shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(f)(1) At the time of soliciting nominations for the leasing of lands within three miles of the seaward boundary of any coastal State, the Secretary shall provide the Governor of any such State—

(A) an identification and schedule of the areas and regions offered for leasing;

(B) all information concerning the geographical, geological, and ecological characteristics of such regions;

(C) an estimate of the oil and gas reserves in the areas proposed for leasing; and

(D) an identification of any field, geological structure, or trap located within three miles of the seaward boundary of a coastal State.

(2) After receipt of nominations for any area of the outer Continental Shelf within three miles of the seaward boundary of any coastal State, the Secretary shall inform the Governor of such coastal State of any such area which the Secretary believes should be given further consideration for leasing and which he concludes, in consultation with the Governor of such coastal State, may contain one or more oil or gas pools or fields underlying both the outer Continental Shelf and lands subject to the jurisdiction of such State. If, with respect to such area, the Secretary selects a tract or tracts which may contain one or more oil or gas pools or fields underlying both the outer Conti-

nental Shelf and submerged lands subject to the jurisdiction of such State, the Secretary shall offer the Governor of such coastal State the opportunity to enter into an agreement concerning the disposition of revenues which may be generated by a Federal lease within such area in order to permit their fair and equitable division between the State and Federal Government.

(3) Within ninety days after the offer by the Secretary pursuant to paragraph (2) of this subsection, the Governor shall elect whether to enter into such agreement and shall notify the secretary of his decision. If the Governor accepts the offer, the terms of any lease issued shall be consistent with the provisions of this Act, with applicable regulations, and, to the maximum extent practicable, with the applicable laws of the coastal State. If the Governor declines the offer, or if the parties cannot agree to terms concerning the disposition of revenues from such lease (by the time the Secretary determines to offer the area for lease), the Secretary may nevertheless proceed with the leasing of the area.

(4) Notwithstanding any other provision of this Act, the Secretary shall deposit in a separate account in the Treasury of the United States all bonuses, royalties, and other revenues attributable to oil and gas pools underlying both the outer Continental Shelf and submerged lands subject to the jurisdiction of any coastal State until such time as the Secretary and the Governor of such coastal State agree on, or if the Secretary and the Governor of such coastal State cannot agree, as a district court of the United States determines, the fair and equitable disposition of such revenues and any interest which as accrued and the proper rate of payments to be deposited in the treasuries of the Federal Government and such coastal State.

(g) Nothing contained in this section shall be construed to alter, limit, or modify any claim of any State to any jurisdiction over, or any right, title, or interest in, any submerged lands.

[(c)] *(h)* In order to meet the urgent need for further exploration and development of the sulphur deposits in the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding sulphur leases on submerged lands of the outer Continental Shelf, which are not covered by leases which include sulphur and meet the requirements of subsection (a) of section 6 of this Act, and which sulphur leases shall be offered for bid by sealed bids and granted on separate leases from oil and gas leases, and for a separate consideration, and without priority or preference accorded to oil and gas lessees on the same area.

[(d)] *(i)* A sulphur lease issued by the Secretary pursuant to this section shall (1) cover an area of such size and dimensions as the Secretary may determine, (2) be for a period of not more than ten years and so long thereafter as sulphur may be produced from the area in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon, (3) require the payment to the United States of such royalty as may be specified in the lease but not less than 5 per centum of the gross production or value of the sulphur

at the wellhead, and (4) contain such rental provisions and such other terms and provisions as the Secretary may by regulation prescribe at the time of offering the area for lease.

[(e)] *(j)* The Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur and leases of geothermal steam in any area of the outer Continental Shelf not then under lease for such mineral or geothermal steam upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.

[(f)] *(k)* Notice of sale of leases, and the terms of bidding, authorized by this section shall be published at least thirty days before the date of sale in accordance with rules and regulations promulgated by the Secretary.

[(g)] *(l)* All moneys paid to the Secretary for or under leases granted pursuant to this section shall be deposited in the Treasury in accordance with section 9 of this Act.

[(h)] *(m)* The issuance of any lease by the Secretary pursuant to this Act, or the making of any iterim arrangements by the Secretary pursuant to section 7 of this Act shall not prejudice the ultimate settlement or adjudication of the question as to whether or not the area involved is in the outer Continental Shelf.

[(i)] *(n)* The Secretary may cancel any lease obtained by fraud or misrepresentation.

[(j) Any person complaining of a cancellation of a lease by the Secretary may have the Secretary's action reviewed in the United States District Court for the District of Columbia by filing a petition for review within sixty days after the Secretary takes such action.]

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[SEC. 11. GEOLOGICAL AND GEOPHYSICAL EXPLORATIONS.—Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area.]

SEC. 11. OUTER CONTINENTAL SHELF OIL AND GAS EXPLORATION.—(a)(1) The Secretary or any other Federal department or agency, and any person whom the Secretary by permit or regulation may authorize, may conduct geological and geophysical explorations, including core and test drilling, in the outer Continental Shelf, which do not interfere with or endanger actual operations pursuant to any lease issued or maintained pursuant to this Act, and which are not unduly harmful to the marine environment.

(2) The provisions of paragraph (1) of this subsection shall not apply to any person conducting explorations pursuant to an approved exploration plan on any area under lease to such person pursuant to the provisions of this Act.

(b) Except as provided in subsection (f) of this section, beginning ninety days after the date of enactment of this subsection, no exploration pursuant to any oil and gas lease issued or maintained under this Act may be undertaken by the holder of such lease, except in accordance with the provisions of this section.

(c)(1) Except as otherwise provided in this Act, prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this Act, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any one region of the outer Continental Shelf, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if he finds that such plan is consistent with the provisions of this Act, regulations prescribed under this Act, and the provisions of such lease or leases. The Secretary shall require such modifications or remodifications of such plan as are necessary to achieve such consistency. The Secretary shall approve such plan, as submitted or modified, within thirty days of its submission or resubmission, except that if the Secretary determines that (A) any proposed activity under such plan would result in any condition which would permit him to suspend such activity pursuant to regulations prescribed under section 5(a)(1) of this Act, and (B) such proposed activity cannot be modified to avoid such condition, he may delay the approval of such plan.

(2) An exploration plan submitted under this subsection shall include, in the degree of detail which the Secretary may by regulation require—

(A) a schedule of anticipated exploration activities to be undertaken;

(B) a description of equipment to be used for such activities;

(C) the general location of each well to be drilled and

(D) such other information deemed pertinent by the Secretary.

(3) The Secretary may, by regulation, require that such plan be accompanied by a general statement of anticipated onshore activity resulting from such exploration, the effects and impacts of such activity, and the development and production intentions, which shall be for planning purposes only and which shall not be binding on any party.

(d) The Secretary may, by regulation, require any lessee operating under an approved exploration plan to obtain a permit prior to drilling any well in accordance with such plan.

(e)(1) If a revision of an exploration plan approved under this subsection is submitted to the Secretary, the process to be used for the approval of such revision shall be the same as set forth in subsection (c) of this section.

(2) Except as otherwise provided in this Act; all exploration activities pursuant to any lease shall be conducted in accordance with an approved exploration plan or an approved revision of such plan.

(f)(1) Exploration activities pursuant to any lease on which a drilling permit had been issued prior to the date of enactment of this subsection shall be considered in compliance with this section, but the Secretary may require such activities to be described in an exploration plan, or require a revised exploration plan, and require any such plan to be accompanied by a general statement in accordance with subsection (c)(3) of this section.

(2) In accordance with section 5(a) of this Act, the Secretary may require the submission of additional information or establish additional requirements on lessees conducting exploration activities pur-

suant to any lease issued prior to the date of enactment of this subsection.

(g) (1) The Secretary may permit qualified applicants to conduct geological explorations, including core and test drilling, in those areas and subsurface geological structures of the outer Continental Shelf which the Secretary or the applicants believe contain significant hydrocarbon accumulations.

(2) The Secretary shall, at least once during the two-year period beginning on the date of enactment of this subsection, offer persons wishing to conduct geological explorations pursuant to permits issued under paragraph (1) of this subsection an opportunity to apply for such permits.

(3) The Secretary shall provide by regulation the length of time during which we will offer applicants the opportunity to obtain a permit pursuant to this subsection.

(h) Any permit for geological explorations authorized by this section shall be issued only if the Secretary determines, in accordance with regulations issued by the Secretary, that—

(1) the applicant for such permit is qualified;

(2) the exploration will not interfere with or endanger operations under any lease issued or maintained pursuant to this Act; and

(3) such exploration will not be unduly harmful to aquatic life in the area, result in pollution, create hazardous or unsafe conditions, unreasonably interfere with the other uses of the area, or disturb any site, structure, or object of historical or archeological significance.

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[SEC. 15. REPORT BY SECRETARY.—As soon as practicable after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives a report detailing the amounts of all moneys received and expended in connection with the administration of this Act during the preceding fiscal year.]

SEC. 15. ANNUAL REPORT BY SECRETARY TO CONGRESS.—Within six months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives the following reports:

(1) A report on the leasing and production program in the outer Continental Shelf during such fiscal year, which shall include—

(A) a detailed accounting of all moneys received and expended;

(B) a detailed accounting of all exploration, exploratory drilling, leasing, development, and production activities;

(C) a summary of management, supervision, and enforcement activities;

(D) a list of all shut-in and flaring wells; and

(E) recommendations to the Congress (i) for improvements in management, safety, and amount of production from leasing and operations in the outer Continental Shelf, and (ii) for resolution of jurisdictional conflicts or ambiguities.

(2) A report, prepared after consultation with the Attorney General, with recommendations for promoting competition in the leasing of outer Continental Shelf lands, which shall include any recommendations or findings by the Attorney General, any plans for implementing recommended administrative changes, and drafts of any proposed legislation, and which shall contain—

(A) an evaluation of the competitive bidding systems permitted under the provisions of section 8 of this Act, and, if applicable, the reasons why a particular bidding system has not been utilized;

(B) an evaluation of alternative bidding systems not permitted under section 8 of this Act, and why such system or systems should or should not be utilized;

(C) an evaluation of the effectiveness of restrictions on joint bidding in promoting competition and, if applicable, any suggested administrative or legislative action on joint bidding;

(D) an evaluation of present measures and a description of any additional measures to encourage entry of new competitors; and

(E) an evaluation of present measures and a description of additional measures to insure an adequate supply of oil and gas to independent refiners and distributors.

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SEC. 18. OUTER CONTINENTAL SHELF LEASING PROGRAM.—(a) The Secretary, pursuant to procedures set forth in subsections (c) and (d), shall prepare, periodically revise, and maintain an oil and gas leasing program to implement the policies of this Act. The leasing program shall indicate as precisely as possible the size, timing, and location of leasing activity which he determines will best meet national energy needs for the five-year period following its approval or reapproval. Such leasing program shall be prepared and maintained in a manner consistent with the following principles:

(1) Management of the outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments.

(2) Timing and location of exploration, development, and production of oil and gas among the oil- and gas-bearing physiographic regions of the outer Continental Shelf shall be based on a consideration of—

(A) existing information concerning the geographical, geological, and ecological characteristics of such regions;

(B) an equitable sharing of developmental benefits and environmental risks among the various regions;

(C) the location of such regions with respect to, and the relative needs of, regional and national energy markets;

(D) the location of such regions with respect to other uses of the sea and seabed, including fisheries, navigation, exist-

ing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the outer Continental Shelf;

(E) the interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination;

(F) laws, goals, and policies of affected States which have been specifically identified by the Governors of such States as relevant matters for the Secretary's consideration;

(G) programs promulgated by coastal States and approved pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

(H) whether the oil and gas producing industry will have sufficient resources, including equipment and capital, to bring about the exploration, development, and production of oil and gas in such regions in an expeditious manner;

(I) the relative environmental sensitivity and marine productivity of different areas of the outer Continental Shelf; and

(J) relevant baseline and predictive information for different areas of the outer Continental Shelf.

(3) The Secretary shall select the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.

(4) Leasing activities shall be conducted to assure receipt of fair value for the lands leased and the rights conveyed by the Federal Government.

(b) The leasing program shall include estimates of the appropriations and staff required to—

(1) obtain resource information and any other information needed to prepare the leasing program required by this section;

(2) analyze and interpret the exploratory data and any other information which may be compiled under the authority of this Act;

(3) conduct environmental baseline studies and prepare any environmental impact statement required in accordance with this Act and with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

(4) supervise operations conducted pursuant to each lease in the manner necessary to assure due diligence in the exploration and development of the lease area and compliance with the requirements of applicable law and regulations, and with the terms of the lease.

(c)(1) During the preparation of any proposed leasing program under this section, the Attorney General and the Federal Trade Commission shall report to the Secretary with respect to the effect on competition of outer Continental Shelf exploration, development, and production. Such reports shall analyze competition and individual market shares within regional markets.

(2) During the preparation of any proposed leasing program under this section, the Secretary shall invite and consider suggestions for

such program from any interested Federal agency, from the Governor of any State which may become an affected State under such proposed program, and from the executive of any affected local government unit in such an affected State. The Secretary may also invite or consider suggestions from any other person.

(3) After such preparation and at least sixty days prior to publication of a proposed leasing program in the Federal Register pursuant to paragraph (4) of this subsection, the Secretary shall transmit a copy of such proposed program to the Governor of each affected State for review and comment. The Governor shall solicit comments from the executives of local governments in his State affected by the proposed program. If any comment is received by the Secretary at least fifteen days prior to submission to the Congress pursuant to such paragraph (4) and includes a request for any modification of such proposed program, the Secretary shall reply in writing, granting or denying such request in whole or in part, or granting such request in such modified form as the Secretary considers appropriate, and stating his reasons therefor. All such correspondence between the Secretary and the Governor of any affected State, together with any additional information and data relating thereto, shall accompany such proposed program when it is submitted to the Congress.

(4) Within nine months after the date of enactment of this section, the Secretary shall submit a proposed leasing program to the Congress, the Attorney General, the Federal Trade Commission, the Governors of affected States, and through the Governors, the executives of affected local governments, and shall publish such proposed program in the Federal Register.

(d) (1) Within ninety days after the date of publication of a proposed leasing program, the Attorney General shall submit comments on the anticipated effects of such proposed program upon competition, and any State, local government, or other person may submit comments and recommendations as to any aspect of such proposed program.

(2) At least sixty days prior to approving a proposed leasing program, the Secretary shall submit it to the President and the Congress, together with any comments received. Such submission shall indicate why any specific recommendation of the Attorney General or a State or a local government was not accepted.

(3) After the leasing program has been approved by the Secretary, or after eighteen months following the date of enactment of this section, whichever first occurs, no lease shall be issued unless it is for an area included in the approved leasing program and unless it contains provisions consistent with the approved leasing program, except that leasing shall be permitted to continue until such program is approved and for so long thereafter as such program is under judicial or administrative review pursuant to the provisions of this Act.

(e) The Secretary shall review the leasing program approved under this section at least once each year, and he may revise and reapprove such programs, at any time, in the same manner as originally developed.

(f) The Secretary shall, by regulation, establish procedures for—

(1) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;

(2) public notice of and participation in development of the leasing program;

(3) review by State and local governments which may be impacted by the proposed leasing;

(4) periodic consultation with State and local governments, oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in activity in or on the outer Continental Shelf, including those involved in fish and shellfish recovery, and recreational activities; and

(5) (A) coordination of the program with the management program being developed by any State pursuant to section 305 of the Coastal Zone Management Act of 1972, and (B) assuring consistency, as provided by the Coastal Zone Management Act, with the program of any State which has been approved pursuant to section 306 of such Act, to the maximum extent practicable.

Such procedures shall be applicable to any revision or reapproval of the leasing program.

(g) The Secretary may obtain from public sources, or purchase from private sources, any survey, data, report, or other information (including interpretations of such data, survey, report, or other information) which may be necessary to assist him in preparing any environmental impact statement and in making other evaluations required by this Act. Data of a classified nature provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. The Secretary shall maintain the confidentiality of all privileged data or information for such period of time as is provided for in this Act, established by regulation, or agreed to by the parties.

(h) The heads of all Federal departments and agencies shall provide the Secretary with any nonprivileged information and may provide the Secretary with any privileged information he requests to assist him in preparing the leasing program. Privileged information provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. In addition, the Secretary shall utilize the existing capabilities and resources of such Federal departments and agencies by appropriate agreement.

SEC. 19. COORDINATION AND CONSULTATION WITH AFFECTED STATES AND LOCAL GOVERNMENTS.—(a) Any Governor of any affected State or the executive of any affected local government in such State may submit recommendations to the Secretary regarding the size, timing, or location of a proposed lease sale or with respect to a proposed development and production plan.

(b) Such recommendations shall be submitted within sixty days after notice of such proposed lease sale or ninety days after receipt of such development and production plan.

(c) The Secretary shall accept recommendations of the Governor and may accept recommendations of the executive of any affected local government if he determines, after having provided the opportunity for full consultation, that they provide for a reasonable balance be-

tween the national interest and the well-being of the citizens of the affected State. For the purposes of this subsection, a determination of the national interest shall be based on the desirability of obtaining oil and gas supplies in a balanced manner and on the findings, purposes, and policies of this Act. The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.

(d) The Secretary's determination that recommendations are not consistent with the national interest shall be final and shall not, alone, be a basis for invalidation of a proposed lease sale or a proposed development and production plan in any suit or judicial review pursuant to section 23 of this Act, unless found to be arbitrary or capricious.

(e) The Secretary is authorized to enter into cooperative agreements with affected States for purposes which are consistent with this Act and other applicable Federal law. Such agreements may include, but not be limited to, the sharing of information (in accordance with the provisions of section 26 of this Act), the joint utilization of available expertise, the facilitating of permitting procedures, joint planning and review, and the formation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws, regulations, and stipulations relevant to outer Continental Shelf operations both onshore and offshore.

Sec 20. Baseline and Monitoring Studies.—(a)(1) The Secretary shall conduct a study of any area or region included in any lease sale in order to establish baseline information concerning the status of the human, marine, and coastal environments of the outer Continental Shelf and the coastal areas which may be affected by oil and gas development in such area or region.

(2) Each study required by paragraph (1) shall be commenced not later than six months after the date of enactment of this section with respect to any area or region where a lease sale has been held or scheduled before such date of enactment, and not later than six months prior to the holding of a lease sale with respect to any area or region where no lease sale has been held or scheduled before such date of enactment. The Secretary may utilize information collected in any study prior to such date of enactment in conducting any such study.

(3) In addition to developing baseline information, any study of an area or region, to the extent practicable, shall be designed to predict impacts on the marine biota which may result from chronic low level pollution or large spills associated with outer Continental Shelf production, from the introduction of drill cuttings and drilling muds in the area, and from the laying of pipe to serve the offshore production area, and the impacts of development offshore on the affected and coastal areas.

(b) Subsequent to the leasing and developing of any area or region, the Secretary shall conduct such additional studies to establish baseline information as he deems necessary and shall monitor the human, marine, and coastal environments of such area or region in a manner

designed to provide time-series and data trend information which can be used for comparison with any previously collected data for the purpose of identifying any significant changes in the quality and productivity of such environments, for establishing trends in the areas studied and monitored, and for designing experiments to identify the causes of such changes.

(c) The Secretary shall, by regulation, establish procedures for carrying out his duties under this section, and shall plan and carry out such duties in full cooperation with affected States. To the extent that other Federal agencies have prepared environmental impact statements, are conducting studies, or are monitoring the affected human, marine, or coastal environment, the Secretary may utilize the information derived therefrom in lieu of directly conducting such activities. The Secretary may also utilize information obtained from any State or local government entity, or from any person, for the purposes of this section. For the purpose of carrying out his responsibilities under this section, the Secretary may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of any Federal, State, or local government agency.

(d) The Secretary shall consider available relevant baseline information in making decisions (including those relating to exploration plans, drilling permits, and development and production plans), in developing appropriate regulations and lease conditions, and in issuing operating orders.

(e) As soon as practicable after the end of each fiscal year, the Secretary shall submit to the Congress and make available to the general public an assessment of the cumulative effect of activities conducted under this Act on the human, marine, and coastal environments.

(f) In executing his responsibilities under this section, the Secretary shall, to the maximum extent practicable, enter into appropriate arrangements to utilize on a reimbursable basis the capabilities of the Department of Commerce. In carrying out such arrangements, the Secretary of Commerce is authorized to enter into contracts or grants with any person, organization, or entity with funds appropriated to the Secretary of the Interior pursuant to this Act.

SEC. 21. SAFETY REGULATIONS.—(a) Upon the date of enactment of this section, the Secretary, the Secretary of Labor, and the Secretary of the Department in which the Coast Guard is operating shall, in consultation with each other and, as appropriate, with the heads of other Federal departments and agencies, promptly commence a joint study of the adequacy of existing safety regulations, and of the technology, equipment, and techniques available for the exploration, development, and production of the natural resources of the outer Continental Shelf. The results of this study shall be submitted to the President who shall submit a plan to Congress of his proposals to promote safety and health in the exploration, development, and production of the natural resources of the outer Continental Shelf.

(b) In exercising their respective responsibilities for the artificial islands, installations, and other devices referred to in section 4(a)(1) of this Act, the Secretary, and the Secretary of the Department in which the Coast Guard is operating, shall require, on all new drilling and production operations and, wherever practicable, on existing operations, the use of the best available and safest technology which the

Secretary determines to be economically achievable, wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Secretary determines that the incremental benefits are clearly insufficient to justfy the incremental costs of utilizing such technology.

(c)(1) Within sixty days after the date of enactment of this section, the Secretary of Labor shall promulgate interim regulations or standards pursuant to the Occupational Safety and Health Act of 1970 applying to diving activities in the waters above the outer Continental Shelf, and to other unregulated hazardous working conditions for which he, in consultation with the Secretary and the Secretary of the Department in which the Coast Guard is operating, determines such regulations or standards are necessary. Such regulations or standards may be modified from time to time as necessary, and shall remain in effect until final regulations or standards are promulgated.

(2) Notwithstanding section 4(b)(1) of the Occupational Safety and Health Act of 1970, regulations for occupational safety and health shall be promulgated and enforced by the Department of Labor and the Department in which the Coast Guard is operating, in accordance with their respective statutory authority. The two Departments shall coordinate their activities in a manner which avoids duplication of effort and maximizes protection of employees.

(d) Nothing in this section shall affect or duplicate any authority provided by law to the Secretary of Transportation to establish and enforce pipeline safety standards and regulations.

(e)(1) In administering the provisions of this section, the Secretary shall consult and coordinate with the head of other appropriate Federal departments and agencies for purposes of assuring that, to the maximum extent practicable, inconsistent or duplicative requirements are not imposed.

(2) The Secretary shall make available to any interested person a compilation of all safety and other regulations which are prepared and promulgated by any Federal department or agency and applicable to activities on the outer Continental Shelf. Such compilation shall be revised and updated annually.

SEC. 22. ENFORCEMENT.—(a) The applicable Federal officials shall strictly enforce safety and environmental regulations promulgated pursuant to this Act. Each Federal department and agency may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of other Federal departments and agencies for the enforcement of their respective regulations.

(b) It shall be the duty of any holder of a lease or permit under this Act to—

(1) maintain all places of employment within such lease area or within the area covered by such permit in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the lease holder or permit holder or of any contractor or subcontractor operating within such lease area or within the area covered by such permit on the outer Continental Shelf;

(2) maintain all operations within such lease area or within the area covered by such permit in compliance with regulations

intended to protect persons, property, and the environment on the outer Continental Shelf; and

(3) allow prompt access, at the site of any operation subject to safety regulations, to any inspector, and to provide such documents and records which are pertinent to occupational or public health, safety, or environmental protection, as may be requested.

(c) The Secretary and the Secretary of the Department in which the Coast Guard is operating shall individually, or jointly if they so agree, promulgate regulations to provide for—

(1) scheduled onsite inspection, at least once a year, of each facility on the outer Continental Shelf which is subject to any environmental or safety regulation promulgated pursuant to this Act, which inspection shall include all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents; and

(2) periodic onsite inspection, at least once a year, without advance notice to the operator of such facility to assure compliance with such environmental or safety regulations.

(d) (1) The Secretary or the Secretary of the Department in which the Coast Guard is operating shall make an investigation and public report on each major fire and each major oil spillage occurring as a result of operations conducted pursuant to this Act, and may, in his discretion, make an investigation and report of lesser oil spillages. For purposes of this subsection, a major oil spillage is any spillage in one instance of more than two hundred barrels of oil over a period of thirty days. All holders of leases or permits issued or maintained under this Act shall cooperate with the appropriate Secretary in the course of any such investigation.

(2) The Secretary or the Secretary of Labor shall make an investigation and public report on any death or serious injury occurring as a result of operations conducted pursuant to this Act, and may, in his discretion, make an investigation and report of any injury. For purposes of this subsection, a serious injury is one resulting in substantial impairment of any bodily unit or function. All holders of leases or permits issued or maintained under this Act shall cooperate with the appropriate Secretary in the course of any such investigation.

(3) For purposes of carrying out their responsibilities under this section, the Secretary, the Secretary of Labor, and the Secretary of the Department in which the Coast Guard is operating may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of any Federal department or agency.

(e) The Secretary, or, in the case of occupational safety and health, the Secretary of Labor, shall consider any allegation from any person of the existence of a violation of a safety regulation issued under this Act. The respective Secretary shall answer such allegation no later than ninety days after receipt thereof, stating whether or not such alleged violation exists and if so, what action has been taken.

(f) In any investigation conducted pursuant to this section, the Secretary, the Secretary of Labor, or the Secretary of the Department in which the Coast Guard is operating shall have power to summon witnesses, and to require the production of books, papers, documents, and any other evidence. Attendance of witnesses or the production

of books, papers, documents, or any other evidence shall be compelled by a similar process as in district courts of the United States. Such Secretary, or his designee, shall administer all necessary oaths to any witnesses summoned before such investigation.

(g) The Secretary shall, after consultation with the Secretary of Labor and the Secretary of the Department in which the Coast Guard is operating, include in his annual report to Congress required by section 15 of this Act the number of violations of safety regulations reported or alleged, the investigations undertaken, the results of such investigations, and any administrative or judicial action taken as a result of such investigations.

SEC. 23. CITIZEN SUITS, COURT JURISDICTION AND JUDICIAL REVIEW.—(a)(1) Except as provided in this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this Act against any person, including the United States, and any other government instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution) for any alleged violation of any provision of this Act or any regulation promulgated under this Act, or of the terms of any permit or lease issued by the Secretary under this Act.

(2) Except as provided in paragraph (3) of this subsection, no action may be commence under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the alleged violation, in writing under oath, to the Secretary and any other appropriate Federal official, to the State in which the violation allegedly occurred or is occurring, and to any alleged violator; and

(B) if the Secretary or his authorized representative, any other appropriate Federal official, or the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States or a State with respect to such matter, but in any such action any person having a legal interest which is or may be adversely affected or aggrieved may intervene as a matter or right.

(3) An action may be brought under this subsection immediately after notification of the alleged violation in any case in which the alleged violation constitutes an imminent threat to the public health or safety or would immediately affect a legal interest of the plaintiff.

(4) In any action commenced pursuant to this section, the Secretary, the Attorney General, or any other appropriate Federal official, if not a party, may intervene as a matter of right.

(5) A court, in issuing any final order in any action brought pursuant to subsection (a)(1) or subsection (c) of this section, may award costs of litigation, including reasonable attorneys' and expert witness fees, to any party, whenever such court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in a sufficient amount to compensate for any loss or damage suffered, in accordance with the Federal Rules of Civil Procedure.

(6) Except as provided in subsection (c) of this section, all suits challenging actions or decisions allegedly in violation of, or seeking

enforcement of, the provisions of this Act, or any regulations promulgated under this Act, or the terms of any permit or lease issued by the Secretary under this Act, shall be undertaken in accordance with the procedures described in this subsection. Nothing in this section shall restrict any right which any person or class of persons may have under any other Act or common law to seek appropriate relief.

(b) Except as provided in subsection (c) of this section, the United States district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with (1) any operation conducted on the outer Continental Shelf which involves exploration, development, or production of the natural resources of the subsoil and seabed of the outer Continental Shelf, or which involves rights to such natural resources, or (2) the cancellation, suspension, or termination of a lease or permit under this Act. Proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the State nearest the place the cause of action arose.

(c) (1) Any action of the Secretary to approve a leasing program pursuant to section 18 of this Act shall be subject to judicial review only in the United States Court of Appeals for the District of Columbia.

(2) Any action of the Secretary to approve, require modification of, or disapprove any exploration plan or any development and production plan under this Act shall be subject to judicial review only in a United States court of appeals for a circuit in which an affected State is located.

(3) The judicial review specified in paragraphs (1) and (2) of this subsection shall be available only to a person who (A) participated in the administrative proceedings related to the actions specified in such paragraphs, (B) is adversely affected or aggrieved by such action, (C) files a petition for review of the Secretary's action within sixty days after the date of such action, and (D) promptly transmits copies of the petition to the Secretary and to the Attorney General.

(4) Any action of the Secretary specified in paragraph (1) or (2) shall only be subject to review pursuant to the provisions of this subsection, and shall be specifically excluded from citizen suits which are permitted pursuant to subsection (a).

(5) The Secretary shall file in the appropriate court the record of any public hearings required by this Act and any additional information upon which the Secretary based his decision, as required by section 2112 of title 28, United States Code. Specific objections to the action of the Secretary shall be considered by the court only if the issues upon which such objections are based have been submitted to the Secretary during the administrative proceedings related to the actions involved.

(6) The court of appeals conducting a proceeding pursuant to this subsection shall consider the matter under review solely on the record made before the Secretary. The findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

(7) Upon the filing of the record with the court pursuant to paragraph (5), the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari.

SEC. 24. REMEDIES AND PENALTIES.—(a) At the request of the Secretary, the Attorney General or a United States attorney shall institute a civil action in the district court of the United States for the district in which the affected operation is located for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this Act, any regulation or order issued under this Act, or any term of a lease, license, or permit issued pursuant to this Act.

(b) If any person fails to comply with any provision of this Act, or any term of a lease, license, or permit issued pursuant to this Act, or any regulation or order issued under this Act, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than $10,000 for each day of the continuance of such failure. The Secretary may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing.

(c) Any person who knowingly and willfully (1) violates any provision of this Act, any term of a lease, license, or permit issued pursuant to this Act, or any regulation or order issued under the authority of this Act designed to protect health, safety, or the environment or conserve natural resources, (2) makes any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under this Act, (3) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this Act, or (4) reveals any data or information required to be kept confidential by this Act shall, upon conviction, be punished by a fine of not more than $100,000, or by imprisonment for not more than ten years, or both. Each day that a violation under clause (1) of this subsection continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in clause (3) of this subsection, shall constitute a separate violation.

(d) Whenever a corporation or other entity is subject to prosecution under subsection (c) of this section, any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subsection (c) of this section.

(e) The remedies and penalities prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this section shall be in addition to any other remedies and penalties afforded by any other law or regulation.

SEC. 25. OIL AND GAS DEVELOPMENT AND PRODUCTION.—(a) (1) Prior to development and production pursuant to an oil and gas lease issued

after the date of enactment of this section in a frontier area, or issued or maintained prior to such date of enactment with respect to which no oil or gas has been discovered in commercial quantities prior to such date of enactment, the lessee shall submit a development and production plan (hereinafter in this section referred to as a "plan") to the Secretary, for approval pursuant to this section.

(2) A plan shall be accompanied by a statement describing all facilities and operations, other than those on the outer Continental Shelf, proposed by the lessee and known by him (whether or not owned or operated by such lessee) which will be constructed or utilized in the development, production, transportation, processing, or refining of oil or gas from the lease area, including the location and site of such facilities and operations, the land, labor, material, and energy requirements associated with such facilities and operations, and all environmental and safety safeguards to be implemented.

(3) Except for any privileged information (as such term is defined in regulations issued by the Secretary), the Secretary, within ten days after receipt of a plan and statement, shall (A) submit such plan and statement to the Governor of any affected State, and upon request, to the executive of any affected local government, and (B) make such plan and statement available to any other appropriate interstate regional entity and the public.

(b) After the date of enactment of this section, no oil and gas lease may be issued pursuant to this Act in any frontier area, unless such lease requires that development and production of reserves be carried out in accordance with a plan which complies with the requirements of this section.

(c) A plan may apply to more than one oil and gas lease, and shall set forth, in the degree of detail established by regulations issued by the Secretary—

(1) the specific work to be performed;

(2) a description of all facilities and operations located on the outer Continental Shelf which are proposed by the lessee or known by him (whether or not owned or operated by such lessee) to be directly related to the proposed development, including the location and size of such facilities and operations, and the land, labor, material, and energy requirements associated with such facilities and operations;

(3) the environmental safeguards to be implemented on the outer Continental Shelf and how such safeguards are to be implemented;

(4) all safety standards to be met and how such standards are to be met;

(5) an expected rate of development and production and a time schedule for performance; and

(6) such other relevant information as the Secretary may by regulation require.

(d) (1) The Secretary shall, at least once prior to approving a development and production plan in any frontier area, declare approval of a plan for a lease or set of leases to be a major Federal action. For the purposes of this section, such approval shall be deemed to be a major Federal action.

(2) The Secretary may require lessees on adjacent or nearby leases to submit preliminary of final plans for their leases, prior to or immediately after a determination by the Secretary that the procedures under the National Environmental Policy Act of 1969 shall commence.

(e) If approval of a development and production plan is found to be a major Federal action, the Secretary shall transmit the draft environmental impact statement to the Governor of any affected State, any appropriate interstate regional entity, and the executive of any affected local government area, for review and comment, and shall make such draft available to the general public.

(f) If approval of a development and production plan is not found to be a major Federal action, the Governor of any affected State, and the executive of any affected local government area shall have ninety days from receipt of the plan from the Secretary to submit comments and recommendations. Such comments and recommendations shall be made available to the public upon request. In addition, any interested person may submit comments and recommendations.

(g) (1) After reviewing the record of any public hearing held with respect to the approval of a plan pursuant to the National Environmental Policy Act of 1969 or the comments and recommendations submitted under subsection (f) of this section, the Secretary shall, within sixty days after the release of the final environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 in accordance with subsection (d) of this section, or sixty days after the period provided for comment under subsection (f) of this section, approve, disapprove, or require modifications of the plan. The Secretary shall require modification of a plan if he determines that the lessee has failed to make adequate provision in such plan for safe operations on the lease area or for protection of the human, marine, or coastal environment, including compliance with the regulations prescribed by the Secretary pursuant to paragraphs (8) and (9) of section 5(a) of this Act. Any modification required by the Secretary which affects land use and water use of the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) shall be consistent with such programs unless the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act. The Secretary shall disapprove a plan—

(A) if the lessee fails to demonstrate that he can comply with the requirements of this Act or other applicable Federal law, including the regulations prescribed by the Secretary pursuant to paragraphs (8) and (9) of section 5(a) of this Act;

(B) If those activities described in the plan which affect land use and water use of the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) are not concurred with by such State pursuant to section 307(c) of such Act, and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of such Act;

(C) if operations threaten national security or national defense; or

(D) if the Secretary determines, because of exceptional geological conditions in the lease area, exceptional resource values in the marine or coastal environment, or other exceptional circumstances, that (i) implementation of the plan would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal or human environments, (ii) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time, and (iii) the advantages of disapproving the plan outweigh the advantages of development and production.

(2) (A) If a plan is disapproved—

(i) under subparagraph (A) of paragraph (1); or

(ii) under subparagraph (B) of paragraph (1) with respect to a lease issued after approval of a coastal zone management program pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1455),

the lessee shall not be entitled to compensation because of such disapproval.

(B) If a plan is disapproved—

(i) under subparagraph (C) or (D) of paragraph (1); or

(ii) under subparagraph (B) of paragraph (1) with respect to a lease issued before approval of a coastal zone management program pursuant to the Coastal Zone Management Act of 1972, and such approval occurs after the lessee has submitted a plan to the Secretary,

the term of the lease shall be duly extended, and at any time within five years after such disapproval, the lessee may reapply for approval of the same or a modified plan, and the Secretary shall approve, disapprove, or require modifications of a plan in accordance with this subsection.

(C) Upon the expiration of the five-year period described in subparagraph (B) of this paragraph, or, in the Secretary's discretion, at an earlier time upon request of a lessee, if the Secretary has not approved a plan, the Secretary shall cancel the lease. In the case of any lease cancelled after disapproval of a plan under such subparagraph (B) which was issued after the date of enactment of this section, the lessee shall be entitled to receive such compensation as he shows to the Secretary is equal to the lesser of—

(i) the fair value of the cancelled rights as of the date of cancellation taking account of both anticipated revenues from the lease and anticipated costs, including cost of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, in the case of an oil spill, and all other costs reasonably anticipated with respect to the lease; or

(ii) the excess, if any, over the lessee's revenues from the lease (plus interest thereon from date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease, and in connection with exploration or development, or both,

pursuant to the lease (plus interest on such consideration and such expenditures from the date of payment to the date of reimbursement).

In the case of any lease cancelled after disapproval of a plan under subparagraph (B) of this paragraph which was issued before the date of enactment of this section, the lessee shall be entitled to receive fair value in accordance with clause (i) of this subparagraph. The Secretary may, at any time within the five-year period described in such subparagraph (B), require the lessee to submit a plan of development and production for approval, disapproval, or modification. If the lessee fails to submit a required plan expeditiously and in good faith, the Secretary shall find that the lessee has not been duly diligent in pursuing his obligations under the lease, and shall immediately cancel such lease, without compensation, under the provisions of section 5(c) of this Act.

(3) The Secretary shall, from time to time, review each plan approved under this section. Such a review shall be based upon changes in available information and other onshore or offshore conditions affecting or impacted by development and production pursuant to such plan. If the review indicates that the plan should be revised to meet the requirements of this subsection, the Secretary shall require such revision.

(h) The Secretary may approve any revision of an approved plan proposed by the lessee if he determines that such revision will lead to greater recovery of oil and natural gas, improve the efficiency, safety, and environmental protection of the recovery operation, is the only means available to avoid substantial economic hardship to the lessee, or is otherwise not inconsistent with the provisions of this Act, to the extent such revision is consistent with protection of the marine and coastal environments. Any revision of an approved plan which the Secretary determines is significant shall be reviewed in accordance with subsections (d) through (g) of this section.

(i) Whenever the owner of any lease fails to submit a plan in accordance with regulations issued under this section, or fails to comply with an approved plan, the lease may, after notice to such owner of such failure and expiration of any reasonable period allowed for corrective action, and after an opportunity for a hearing, be forfeited, canceled, or terminated, subject to the right of judicial review, in accordance with the provisions of section 23(b) of this Act. Termination of a lease because of failure to comply with an approved plan, including required modifications or revisions, shall not entitle a lessee to any compensation.

(j) If any development and production plan submitted to the Secretary pursuant to this section provides for the production and transportation of natural gas, the lessee shall contemporaneously submit to the Federal Power Commission that portion of such plan which relates to production of natural gas and the facilities for transportation of natural gas. The Secretary and the Federal Power Commission shall agree as to which of them shall prepare any environmental impact statement which may be required pursuant to the National Environmental Policy Act of 1969 applicable to such portion of such plan, or conduct studies as to the effect on the environment of im-

plementing it. Thereafter, the findings and recommendations by the agency preparing such environmental impact statement or conducting any studies which they may deem desirable pursuant to that agreement shall be adopted by the other agency, and such other agency shall not independently prepare another environmental impact statement or duplicate such studies with respect to such portion of such plan, but the Federal Power Commission, in connection with its review of an application for a certificate of public convenience and necessity applicable to such transportation facilities pursuant to section 7 of the Natural Gas Act (15 U.S.C. 717), may prepare such environmental studies or statement relevant to certification of such transportation facilities as have not been covered by an environmental impact statement or studies prepared by the Secretary. The Secretary in consultation with the Federal Power Commission, shall promulgate rules to implement this subsection, but the Federal Power Commission shall retain sole authority with respect to rules and procedure applicable to the filing of any application with the Commission and to all aspects of the Commission's review of, and action on, any such application.

(k) An oil and gas lease issued or maintained under this Act which is located in any area which is not a frontier area shall be subject to the provisions of this section if the Secretary determines, pursuant to regulations prescribed by the Secretary, that the likely environmental or onshore impacts of the development and production of such lease make the application of the provisions of this section in the public interest.

SEC. 26. OUTER CONTINENTAL SHELF OIL AND GAS INFORMATION PROGRAM.—(a)(1)(A) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas pursuant to this Act shall provide the Secretary access to all data obtained from such activity and shall provide copies of such specific data, and any interpretation of any such data, as the Secretary may request. Such data and interpretation shall be provided in accordance with regulations which the Secretary shall prescribe.

(B) If an interpretation provided pursuant to subparagraph (A) of this paragraph is made in good faith by the lessee or permittee, such lessee or permittee shall not be held responsible for any consequence of the use of or reliance upon such interpretation.

(C) Whenever any data is provided to the Secretary pursuant to subparagraph (A) of this paragraph—

(i) by a lessee, in the form and manner of processing which is utilized by such lessee in the normal conduct of his business, the Secretary shall pay the reasonable cost of reproducing such data; and

(ii) by a lessee, in such other form and manner of processing as the Secretary may request, or by a permittee, the Secretary shall pay the reasonable cost of processing and reproducing such data, pursuant to such regulations as he may prescribe.

(2) Each Federal department and agency shall provide the Secretary with any data obtained by such Federal department or agency conducting exploration pursuant to section 11 of this Act, and any other information which may be necessary or useful to assist him in carrying out the provisions of this Act.

(b)(1) Information provided to the Secretary pursuant to subsection (a) of this section shall be processed, analyzed, and interpreted by the Secretary for purposes of carrying out his duties under this Act.

(2) As soon as practicable after information provided to the Secretary pursuant to subsection (a) of this section is processed, analyzed, and interpreted, the Secretary shall make available to the affected States and to any requesting affected local government, a summary of data designed to assist them in planning for the onshore impacts of possible oil and gas development and production. Such summary shall include estimates of (A) the oil and gas reserves in areas leased or to be leased, (B) the size and timing of development if and when oil or gas, or both, is found, (C) the location of pipelines, and (D) the general location and nature of onshore facilities.

(c) The Secretary shall prescribe regulations to (1) assure that the confidentiality of privileged information received by the Secretary under this section will be maintained, and (2) set forth the time periods and conditions which shall be applicable to the release of such information. Such regulations shall include a provision that no such information will be transmitted to any affected State unless the lessee, or the permittee and all persons to whom such permittee has sold such information under promise of confidentiality, agree to such transmittal.

(d)(1) The Secretary shall transmit to any affected State—

(A) a copy of all relevant actual or proposed programs, plans, reports, environmental impact statements, tract nominations (including negative nominations) and other lease sale information, any similar type of relevant information, and all modifications and revisions thereof and comments thereon, prepared or obtained by the Secretary pursuant to this Act;

(B)(i) the summary of data prepared by the Secretary pursuant to subsection (b)(2) of this section, and (ii) any other processed, analyzed, or interpreted data prepared by the Secretary pursuant to subsection (b)(1) of this subsection, unless the Secretary determines that transmittal of such data prepared pursuant to subsection (b)(1) would unduly damage the competitive position of the lessee or permittee who provided the Secretary with the information which the Secretary had processed, analyzed, or interpreted; and

(C) any relevant information received by the Secretary pursuant to subsection (a) of this section, subject to any applicable requirements as to confidentiality which are set forth in regulations prescribed under subsection (c) of this section.

(2) Notwithstanding the provisions of any regulation required pursuant to the second sentence of subsection (c) of this section, the Governor of any affected State may designate an appropriate State official to inspect, at a regional location which the Secretary shall designate, any privileged information received by the Secretary regarding any activity adjacent to such State, except that no such inspection shall take place prior to the sale of a lease covering the area in which such activity was conducted. Knowledge obtained by such State during such inspection shall be subject to applicable requirements as to con-

fidentiality which are set forth in regulations prescribed under subsection (c) of this section.

(e) Prior to transmitting any privileged information to any State, or granting such State access to such information, the Secretary shall enter into a written agreement with the Governor of such State in which such State agrees, as a condition precedent to receiving or being granted access to such information, to waive the defenses set forth in subsection (f) (2) of this section.

(f) (1) Whenever any employee of the Federal Government or of any State reveals information in violation of the regulations prescribed pursuant to subsection (c) of this section, the lessee or permittee who supplied such information to the Secretary or to any other Federal official, and any person to whom such lessee or permittee has sold such information under promise of confidentiality, may commence a civil action for damages in the appropriate district court of the United States against the Federal Government or such State, as the case may be.

(2) In any action commenced against the Federal Government or a State pursuant to paragraph (1) of this subsection, the Federal Government or such State, as the case may be, may not raise as a defense (A) any claim of sovereign immunity, or (B) any claim that the employee who revealed the privileged information which is the basis of such suit was acting outside the scope of his employment in revealing such information.

(g) Any provisions of State or local law which provides for public access to any privileged information received or obtained by any person pursuant to this Act is expressly preempted by the provisions of this section, to the extent that it applies to such information.

(h) If the Secretary finds that any State cannot or does not comply with the regulations issued under subsection (c) of this section, he shall thereafter withhold transmittal and deny inspection of privileged information to such State until he finds that such State can and will comply with such regulations.

(i) The regulations prescribed pursuant to subsection (c) of this section, and the provisions of subsection 552(b) (9) of title 5, United States Code, shall not apply to any information obtained in the conduct of geological or geophysical explorations by any Federal agency (or any person acting under a service contract with such agency) pursuant to section 11 of this Act.

SEC. 27. FEDERAL PURCHASE AND DISPOSITION OF OIL AND GAS.—(a) (1) Except as may be necessary to comply with the provisions of sections 6 and 7 of this Act, all royalties or net profit shares, or both, accruing to the United States under any oil and gas lease or permit issued or maintained under this Act, shall, on demand of the Secretary, be paid in oil or gas.

(2) Except as otherwise provided in section 12(b) of this Act, the United States shall have the right to purchase not to exceed 16⅔ per centum by volume of the oil and gas produced pursuant to a lease or permit issued under this Act, at the regulated price, or, if no regulated price applies, at the fair market value at the wellhead of the oil and gas saved, removed, or sold, except that any oil or gas obtained by the United States as royalty or net profit share shall be credited against the amount that may be purchased under this subsection.

(3) Title to any royalty, net profit share, or purchased oil or gas may be transferred, upon request, by the Secretary to the Secretary of Defense, to the Administrator of the General Services Administration, or to the Administrator of the Federal Energy Administration, for disposal within the Federal Government.

(b)(1) The Secretary, pursuant to such terms as he determines and in the absence of any provision of law which provides for the mandatory allocation of such oil in amounts and at prices determined by such provision, or regulations issued in accordance with such provision, may offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value any part of the oil (A) obtained by the United States pursuant to any lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a)(2) of this section.

(2) Whenever, after consultation with the Administrator of the Federal Energy Administration, the Secretary determines that small refiners do not have access to adequate supplies of oil at equitable prices, the Secretary may dispose of any oil which is taken as a royalty or net profit share accruing or reserved to the United States pursuant to any lease issued or maintained under this Act, or purchased by the United States pursuant to subsection (a)(2) of this section, by conducting a lottery for the sale of such oil, or may equitably allocate such oil among the competitors for the purchase of such oil, at the regulated price, or if no regulated price applies, at its fair market value. The Secretary shall limit participation in any lottery or allocated sale to assure such access and shall publish notice of such sale, and the terms thereof, at least thirty days in advance of such sale. Such notice shall include qualifications for participation, the amount of oil to be sold, and any limitation in the amount of oil which any participant may be entitled to purchase.

(3) Whenever a provision of law is in effect which provides for the mandatory allocation of such oil in amounts or at prices determined by such provision, or regulations issued in accordance with such provision, the Secretary may only sell such oil in accordance with such provision of law or regulations.

(c)(1) Except as provided in paragraph (2) of this subsection, the Secretary, pursuant to such terms as he determines, may offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value any part of the gas (A) obtained by the United States pursuant to a lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a)(2) of this section.

(2) Whenever, after consultation with and advice from the Administrator of the Federal Energy Administration and the Chairman of the Federal Power Commission, the Secretary determines that an emergency shortage of natural gas is threatening to cause severe economic or social dislocation in any region of the United States and that such region can be serviced in a practical, feasible, and efficient manner by royalty, net profit share, or purchased gas obtained pursuant to the provisions of this subsection, the Secretary may allocate or conduct a lottery for the sale of such gas, and shall limit participation in

any allocated or lottery sale of such gas to any person servicing such region, but he shall not sell any such gas for more than its regulated price, or, if no regulated price applies, less than its fair market value. Prior to allocating any gas pursuant to this paragraph, the Secretary shall consult with the Federal Power Commission.

(d) The lessee shall take any Federal oil or gas for which no acceptable bids are received, as determined by the Secretary, and which is not transferred pursuant to subsection (a) (3) of this section, and shall pay to the United States a cash amount equal to the regulated price, or, if no regulated price applies, the fair market value of the oil or gas so obtained.

(e) As used in this section—

(1) the term "regulated price" means the highest price—

(A) at which Federal oil may be sold pursuant to the Emergency Petroleum Allocation Act of 1973 and any rule or order issued under such Act;

(B) at which natural gas may be sold to natural-gas companies pursuant to the Natural Gas Act and any rule or order issued under such Act; or

(C) at which either Federal oil or gas may be sold under any other provision of law or rule or order thereunder which sets a price (or manner for determining a price) for oil or gas produced pursuant to a lease or permit issued in accordance with this Act; and

(2) the term "small refiner" means an owner of an existing refinery or refineries, including refineries not in operation, who qualifies as a small business concern under the rules of the Small Buisiness Administration and who is unable to purchase in the open market an adequate supply of crude oil to meet the needs of his existing refinery capacities.

(f) Nothing in this section shall prohibit the right of the United States to purchase any oil or gas produced on the outer Continental Shelf, as provided in section 12(b) of this Act.

SEC. 28. LIMITATIONS ON EXPORT.—(a) Except as provided in subsection (d), any oil or gas produced from the outer Continental Shelf shall be subject to the requirements and provisions of the Export Administration Act of 1969 (50 App. U.S.C. 2401 et seq.).

(b) Before any oil or gas subject to this section may be exported under the requirements and provisions of the Export Administration Act of 1969, the President shall make and publish an express finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accordance with the provisions of the Export Administration Act of 1969.

(c) The President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within such time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to such Presidential findings shall cease.

(d) The provisions of this section shall not apply to any oil or gas which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States.

SEC. 29. RESTRICTIONS OF EMPLOYMENT.—No full-time officer or employee of the Department of the Interior who directly or indirectly discharged duties or responsibilities under this Act, and who was at any time during the twelve months preceding the termination of his employment with the Department compensated under the Executive Schedule or compensated at or above the annual rate of basic pay for grade GS–16 of the General Schedule, shall accept, for a period of two years after the date of termination of employment with the Department, employment or compensation directly or indirectly, from any person, persons, association, corporation, or other entity subject to regulation under this Act.

SEC. 30. FISHERMEN'S GEAR COMPENSATION FUNDS.—(a) As used in this section, the term—

(1) "commercial fisherman" means any citizen of the United States whose primary source of income is derived from the harvesting of living marine resources for commercial purposes; and

(2) "fishing gear" means (A) any vessel, and (B) any equipment, whether or not attached to a vessel, which is used in the commercial handling or harvesting of living marine resources.

(b) (1) The Secretary is authorized to establish and maintain a fishermen's gear compensation fund for any area of the outer Continental Shelf for the purpose of providing reasonable compensation for damages to fishing gear and any resulting economic loss to commercial fishermen due to activities related to oil and gas exploration, development, and production in such area. Such fund may sue or be sued in its own name.

(2) After the date of enactment of this section, any lease issued by the Secretary to a lessee for a tract in an area of the outer Continental Shelf shall contain a condition that such lessee, upon request by the Secretary, shall pay the amount specified by the Secretary for the purpose of the establishment and maintenance of a fishermen's gear compensation fund for such area. No lessee shall be required by the Secretary to pay in any calendar year an amount in excess of $5,000 per lease.

(3) For each fishermen's gear compensation fund established under paragraph (1) of this subsection there shall be established within the Treasury of the United States a revolving account, without fiscal year limitation, which shall be available to such fund to make payments pursuant to this section. Amounts collected by the Secretary under paragraph (2) of this subsection for use by such fund shall be deposited in such revolving account. Amounts in such revolving account shall be available for disbursement and shall be disbursed for only the following purposes:

(A) Administrative and personnel expenses of such fund.

(B) The payment of any claim in accordance with procedures established under this section for damages suffered in the area for which such fund was established.

(4) Each fund established for an area of the outer Continental Shelf pursuant to this section shall be maintained at a level not to exceed $100,000 and, if depleted, shall be replenished by equal assessments by the Secretary of each lease holder in such area whose lease was issued after the date of enactment of this section.

(5) Whenever the amount in a revolving account for a fund is not sufficient to pay obligations for which such fund is liable pursuant to this section, such fund may issue, in an amount not to exceed $1,000,000, notes or other obligations to the Secretary of the Treasury, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury may prescribe. Such notes or other obligations shall bear interest at a rate to be determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. Moneys obtained by such fund under this paragraph shall be deposited in the revolving account, and redemptions of any such notes or other obligations shall be made by such fund from the revolving account. The Secretary of the Treasury shall purchase any such notes or other obligations, and for such purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purposes for which securities may be issued under such Act are extended to include any purchase of notes or other obligations issued under this subsection. The Secretary of the Treasury may sell any such notes or other obligations at such times and prices and upon such terms and conditions as he shall determine in his discretion. All purchases, redemptions, and sales of such notes or other obligations by such Secretary of the Treasury shall be treated as public debt transactions of the United States.

(c) (1) In carrying out this section, the Secretary may—

(A) prescribe, and from time to time amend, regulations for the filing, processing, and the fair and expeditious settlement of claims pursuant to this section, including a time limitation on the filing of such claims;

(B) establish and classify all potential hazards to commercial fishing caused by outer Continental Shelf oil and gas exploration, development, and production activities, including all obstructions on the bottom, throughout the water column, and on the surface; and

(C) establish regulations for all materials, equipment, tools, containers, and all other items used on the outer Continental Shelf to be properly stamped or labeled, wherever practicable, with the owner's identification prior to actual use.

(2) (A) Payments may be disbursed by the Secretary from the revolving account established for a fishermen's gear compensation fund for any area of the outer Continental Shelf to compensate commercial fishermen for actual and consequential damages, including loss of profits, due to the damage of fishing gear by materials, equipment, tools, containers, or other items associated with oil and gas exploration, development, or production activities in such area.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, no payment may be made by the Secretary from any revolving account established under this section—

(*i*) *when the damage set forth in a claim was caused by materials, equipment, tools, containers, or other items the ownership and responsibility for which is known;*

(*ii*) *in an amount in excess of $10,000 per claimant for any incident; and*

(*iii*) *to the extent that damages were caused by the negligence or fault of the commercial fisherman making the claim.*

(*d*) (*1*) *Upon receipt of any notification of a claim under this section, the Secretary shall refer such matter to a hearing examiner appointed under section 3105 of title 5, United States Code. Upon receipt of any notification of a claim under this section, the Secretary shall notify all lessees in the area, and any such lessee may submit evidence at any hearing conducted with respect to such claim. Such hearing examiner shall promptly adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code.*

(*2*) *For the purposes of any hearing conducted pursuant to this section, the hearing examiner shall have the power to administer oaths and subpena the attendance and testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues being presented for determination.*

(*3*) *A hearing conducted under this section shall be conducted within the United States judicial district within which the matter giving rise to the claim occurred, or, if such matter occurred within two or more districts, in any of the affected districts, or, if such matter occurred outside of any district, in the nearest district.*

(*4*) *Upon a decision by the hearing examiner and in the absence of a request for judicial review, any amount to be paid, subject to the limitations of this section, shall be certified to the Secretary, who shall promptly disburse the award. Such decision shall not be reviewable by the Secretary.*

(*e*) *Any person who suffers legal wrong or who is adversely affected or aggrieved by the decision of a hearing examiner under this section may, no later than sixty days after such decision is made, seek judicial review of such decision in the United States court of appeals for the circuit in which the damage occurred, or, if such damage occurred outside of any circuit, in the United States court of appeals for the nearest circuit, or in the United States Court of Appeals for the District of Columbia.*

SEC. 31. DOCUMENTATION, REGISTRY, AND MANNING REQUIREMENTS.—Within six months after the date of enactment of this section, the Secretary of the Department in which the Coast Guard is operating shall by regulation require that any vessel, rig, platform, or other vehicle or structure—

(*1*) *which is used at any time after the one-year period beginning on the effective date of such regulation for activities pursuant to this Act shall be manned or crewed by citizens of the United States or aliens lawfully admitted to the United States for permanent residence, unless (A) specific contractual provisions or national registry manning requirements in effect on such date of enactment provide to the contrary, or (B) there are not a sufficient number of such citizens or aliens who are qualified and available for such work;*

(2) which is used at any time after the one-year period beginning on the effective date of such regulation for activities pursuant to this Act and which is built or rebuilt at any time after such one-year period, when required to be documented, shall be documented under the laws of the United States; and

(3) which is used for activities pursuant to this Act shall comply with such minimum standards of design, construction, alteration, and repair as the Secretary of the Department in which the Coast Guard is operating establishes.

COASTAL ZONE MANAGEMENT ACT OF 1972, AS AMENDED

(16 U.S.C. 1456, 1456a, 1464)

SEC. 307(c)(3)(A) * * *

(B) After the management program of any coastal state has been approved by the Secretary under section 306, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land use or water use in the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with such state's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and until—

(i) such state or its designated agency, in accordance with the procedures required to be established by such state pursuant to subparagraph (A), concurs with such person's certification and notifies the Secretary and the Secretary of the Interior of such concurrence;

(ii) concurrence by such [state with such certification is conclusively presumed, as provided for in subparagraph (A); or] *state with such certification is conclusively presumed as provided for in subparagraph (A), except that the time period after which such concurrence shall be presumed shall be three months; or*

(iii) the Secretary finds, pursuant to subparagraph (A), that each activity which is described in detail in such plan is consistent with the objectives of this title or is otherwise necessary in the interest of national security.

If a state concurs or is conclusively presumed to concur, or if the Secretary makes such a finding, the provisions of subparagraph (A) are not applicable with respect to such person, such state, and any Federal license or permit which is required to conduct any activity affecting land uses or water uses in the coastal zone of such state which is described in detail in the plan to which such concurrence or finding applies. If such state objects to such certification and if the

Secretary fails to make a finding under clause (iii) with respect to such certification, or if such person fails substantially to comply with such plan as submitted, such person shall submit an amendment to such plan, or a new plan, to the Secretary of the Interior. With respect to any amendment or new plan submitted to the Secretary of the Interior pursuant to the preceding sentence, the applicable time period for purposes of concurrence by conclusive presumption under subparagraph (A) is 3 months.

* * * * * * *

COASTAL ENERGY IMPACT PROGRAM

SEC. 308. (a) * * *

(b)(1) The Secretary shall make grants annually to coastal states, in accordance with the provisions of this subsection.

(2) [The amounts] *Subject to paragraph (3) of this subsection, the amounts* granted to coastal states under this subsection shall be, with respect to any such state for any fiscal year, the sum of the amounts calculated, with respect to such state, pursuant to subparagraphs [(A), (B), (C), and (D)] *(A) and (B):*

(A) An amount which bears, to [one-third] *one-half* of the amount appropriated for the purpose of funding grants under this subsection for such fiscal year, the same ratio that the amount of outer Continental Shelf acreage which is adjacent to such state and which is newly leased by the Federal Government in the immediately preceding fiscal year bears to the total amount of outer **Continental Shelf acreage which is newly leased by the Federal** Government in such preceding year.

[(B) An amount which bears, to one-sixth of the amount appropriated for such purpose for such fiscal year, the same ratio that the volume of oil and natural gas produced in the immediately preceding fiscal year from the outer Continental Shelf acreage which is adjacent to such state and which is leased by the Federal Government bears to the total volume of oil and natural gas produced in such year from all of the outer Continental Shelf acreage which is leased by the Federal Government.]

[(C)] *(B)* An amount which bears, to [one-sixth] *one-half* of the amount appropriated for such purpose for such fiscal year, the same ratio that the volume of oil and natural gas produced from outer Continental Shelf acreage leased by the Federal Government which is first landed in such state in the immediately preceding fiscal year bears to the total volume of oil and natural gas produced from all outer Continental Shelf acreage leased by the Federal Government which is first landed in all of the coastal states in such year.

[(D) An amount which bears, to one-third of the amount appropriated for such purpose for such fiscal year, the same ratio that the number of individuals residing in such state in the immediately preceding fiscal year who obtain new employment in such year as a result of new or expanded outer Continental Shelf energy activities bears to the total number of individuals residing in all of the coastal states in such year who obtain new employment in

such year as a result of such outer Continental Shelf energy activities.]

(3)(A) The Secretary shall not make grants under this subsection to any state in any fiscal year the total of which exceeds 30 per centum of the total amount available to the Secretary for payment to all states in such fiscal year.

(B)(i) If, in any fiscal year, any coastal state will not receive a grant under subparagraph (A) or (B) of paragraph (2), the Secretary shall make a grant to such coastal state in an amount equal to 2 per centum of the total amount available for making grants to all states under such paragraph (2) in such fiscal year if any other coastal state in the same region is receiving a grant under either such subparagraph in such fiscal year.

(ii) For purposes of this subparagraph—

(I) the states of Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia (the Atlantic coastal states) shall constitute one "region";

(II) the states of Alabama, Florida, Louisiana, Mississippi, and Texas (the Gulf coastal states) shall constitute one "region";

(III) the states of California, Oregon, and Washington (the Pacific coastal states) shall constitute one "region"; and

(IV) the state of Alaska shall constitute one "region".

(C) If, in any fiscal year, the total amount of funds available for making grants to coastal states pursuant to this subsection is greater than the total amount of grants payable to such states pursuant to this subsection, the difference between such two amounts shall remain in the Treasury of the United States and be credited to miscellaneous receipts.

(D) If, in any fiscal year, the total amount of funds available for making grants to coastal states pursuant to this subsection is less than the total amount of grants payable to all coastal states pursuant to this subsection, there shall be deducted from the amount payable to each coastal state an amount equal to the product of—

(i) the amount by which the total amount of grants payable to all coastal states exceeds the total amount of funds available for such grants; multiplied by

(ii) a fraction, the numerator of which is the amount of grants payable to such coastal state in such fiscal year and the denominator of which is the total amount of grants payable to all coastal states in such fiscal year.

[(3)] (4)(A) The Secretary shall determine annually the amounts of the grants to be provided under this subsection and shall collect and evaluate such information as may be necessary to make such determinations. Each Federal department, agency, and instrumentality shall provide to the Secretary such assistance in collecting and evaluating relevant information as the Secretary may request. The Secretary shall request the assistance of any appropriate state agency in collecting and evaluating such information.

(B) For purposes of making calculations under paragraph (2), outer Continental Shelf acreage is adjacent to a particular coastal state if such acreage lies on that state's side of the extended lateral

seaward boundaries of such state. The extended lateral seaward boundaries of a coastal state shall be determined as follows:

(i) If lateral seaward boundaries have been clearly defined or fixed by an interstate compact, agreement, or judicial decision (if entered into, agreed to, or issued before the date of the enactment of this paragraph), such boundaries shall be extended on the basis of the principles of delimitation used to so define or fix them in such compact, agreement, or decision.

(ii) If no lateral seaward boundaries, or any portion thereof, have been clearly defined or fixed by an interstate compact, agreement, or judicial decision, lateral seaward boundaries shall be determined according to the applicable principles of law, including the principles of the Convention on the Territorial Sea and the Contiguous Zone, and extended on the basis of such principles.

(iii) If, after the date of enactment of this paragraph, two or more coastal states enter into or amend an interstate compact or agreement in order to clearly define or fix lateral seaward boundaries, such boundaries shall thereafter be extended on the basis of the principles of delimitation used to so define or fix them in such compact or agreement.

(C) For purposes of making calculations under this subsection, the transitional quarter beginning July 1, 1976, and ending September 30, 1976, shall be included within the fiscal year ending June 30, 1976.

[(4)] (5) Each coastal state shall use the proceeds of grants received by it under this subsection for the following purposes (except that priority shall be given to the use of such proceeds for the purpose set forth in subparagraph (A)):

(A) The retirement of state and local bonds, if any, which are guaranteed under subsection (d)(2); except that, if the amount of such grants is insufficient to retire both state and local bonds, priority shall be given to retiring local bonds.

(B) The study of, planning for, development of, and the carrying out of projects and programs in such state which are—

(i) necessary[, because of the unavailability of adequate financing under any other subsection,] to provide new or improved public facilities and public services which are required as a direct result of [new or expanded] outer Continental Shelf energy activity; and

(ii) of a type approved by the Secretary as eligible for grants under this paragraph, except that the Secretary may not disapprove any project or program for highways and secondary roads, docks, navigation aids, fire and police protection, water supply, waste collection and treatment (including drainage), schools and education, and hospitals and health care.

(C) The prevention, reduction, or amelioration of any unavoidable loss in such state's coastal zone of any valuable environmental or recreational resource if such loss results from coastal energy activity.

[(5) The Secretary, in a timely manner, shall determine that each coastal state has expended or committed, and may determine that such state will expend or commit, grants which such state has received

under this subsection in accordance with the purposes set forth in paragraph (4). The United States shall be entitled to recover from any coastal state an amount equal to any portion of any such grant received by such state under this subsection which—

[(A) is not expended or committed by such state before the close of the fiscal year immediately following the fiscal year in which the grant was disbursed, or

[(B) is expended or committed by such state for any purpose other than a purpose set forth in paragraph (4).

Before disbursing the proceeds of any grant under this subsection to any coastal state, the Secretary shall require such state to provide adequate assurances of being able to return to the United States any amounts to which the preceding sentence may apply.]

(6) After making the calculations provided in paragraphs (2) and (3) of this subsection, the Secretary shall require each coastal state which is to receive grants under this subsection to provide adequate assurances of being able to return to the United States any funds to which paragraph (8) of this subsection may apply. After obtaining such assurances, the Secretary shall disburse the proceeds of such grants to such coastal state.

(7) Any coastal state which receives proceeds of any grant under this subsection only may expend or commit such proceeds—

(A) after a determination by the Secretary that such proceeds will be expended or committed by such state in accordance with the purposes set forth in paragraph (5) of this subsection; and

(B) before the close of the fiscal year immediately following the fiscal year in which the proceeds were received.

(8) The United States shall be entitled to recover from any coastal state an amount equal to all or any portion of a grant made to such state under this subsection which is not expended or committed in compliance with paragraph (7) of this subsection.

* * * * * * *

AUTHORIZATION OF APPROPRIATIONS

SEC. 318. (a) There are authorized to be appropriated to the Secretary—

(1) such sums, not to exceed $20,000,000 for each of the fiscal years ending September 30, 1977, September 30, 1978, and September 30, 1979, respectively, as may be necessary for grants under section 305, to remain available until expended;

(2) such sums, not to exceed $50,000,000 for each of the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980, respectively, as may be necessary for grants under section 306, to remain available until expended;

(3) such sums, not to exceed $50,000,000 for [each of the 8 fiscal years occurring during the period beginning October 1, 1976, and ending September 30, 1984], *the fiscal year ending September 30, 1978, and not to exceed $125,000,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, September 30, 1982, September 30, 1983, and September 30, 1984,* as may be necessary for grants under section 308(b);

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XII. Additional Views of Representatives John F. Seiberling, Christopher J. Dodd, Joshua Eilberg, George Miller, and Morris K. Udall

ANTITRUST REVIEW

When the House considers the OCS bill, we will offer an amendment to require a 30-day antitrust review of each OCS lease sale.[1] This review would enable the government to identify in each OCS lease sale any individual leases or conditions likely to have adverse effects upon competition. By authorizing the modification of such leases or conditions in order to reduce or eliminate these adverse effects, the amendment is intended to foster competition and to protect American consumers who might otherwise become the victims of "regional monopolies" and of unnecessary overcharges for oil and gas.[2]

The amendment would require the Secretary of the Interior to notify the Attorney General and the Federal Trade Commission prior to the issuance of OCS leases. The Attorney General would be required to conduct such antitrust review as he deems appropriate, and the FTC would be authorized to conduct such review. Both would be authorized to make non-binding recommendations to the Secretary. The amendment is similar to the antitrust review provisions that the 94th Congress enacted in the Naval Petroleum Reserves Production Act (Public Law 94–258) and in the Federal Coal Leasing Act Amendments (Public Law 94–377).

During the decade prior to this year, the Interior Department exhibited no interest in the effects of federal energy leasing policies upon competition, while the Justice Department was notably uninvolved in governmental decisions concerning the rights to vast quantities of federal energy resources. There was no inter-Departmental coordination or consultation, and neither Department examined the likely or actual effects of OCS lease sales on competition or developed an adequate data base from which to analyze or predict such effects.

In fact, the Justice Department still doesn't know how much oil and gas reserves each major company controls (on a worldwide, domestic, OCS, or regional basis), how much oil and gas each major company produces (on Federal lands and elsewhere, and in each relevant geographic market), what the relevant markets are for each phase of the oil and gas industries, what the degree of substitutability is between petroleum and the major alternative fuels (coal and uranium) how prevalent OCS joint ventures are, which companies are

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[1] By a 10–9 vote, the Committee deleted an antitrust review provision similar to the one in the OCS bill passed by the House in the 94th Congress. Since the Committee's vote, we have re-drafted the provision to meet several specific objections raised by the Administration.

[2] As the House Judiciary Committee stated recently:

"The economic burden of many antitrust violations is borne in large measure by the consumer in the form of higher prices for his goods and services. * * * [A]ntitrust violations almost always contribute to inflation. They introduce illegal and artificial forces into the marketplace, thus undermining our economic system of free enterprise.—[I]t is the consuming public that ultimately benefits from the enforcement of the antitrust laws."—H. Rept. 94–499, pp. 3–4.

members of which OCS joint ventures, whether joint ventures reduce—or actually create or maintain—barriers to entry in OCS operations, whether OCS pipelines are in fact used by their owners to deny access or to charge excessive transportation rates to non-owner shippers (the Justice Department has testified that OCS pipelines may in theory be used in that manner), or whether OCS producers have improperly denied small and independent refiners reasonable access to OCS crude oil. In hearings last year, the Justice Department stated:

> Energy information is not ordinarily collected by the Department of Justice on a regular, institutionalized basis. . . . Instead, energy information is acquired on an ad hoc basis, typically as such data may be required in an investigation or suit in connection with our law enforcement activities.—(U.S. Senate, Committee on Interior and Insular Affairs, 94th Congress, 2d session, Hearings on S. 1864 [Energy Information Act], serial 94–31, Part 1, p. 1101.)

This year the Interior Department and the Justice Department appear at long last to have recognized the principles that (1) OCS leasing policies may have had adverse effects upon competition and (2) the Federal Government has the responsibility to minimize such effects in a manner that does not unduly interfere with other vital national objectives such as producing needed Outer Continental Shelf energy resources.[3] We are also pleased that the Administration now includes competition policy among the major national objectives, and that it endorses the major provisions of H.R. 1614 (as reported) relating to competition.[4]

As OCS leasing, development and production are substantially expanded in the coming decade[5], these new pro-competition provisions should prove to be dramatic improvements over the current law and administrative practices relating to the OCS. However, the provisions in H.R. 1614 (as reported) will not be fully adequate unless accompanied by a requirement for an antitrust review of each OCS lease sale and by express authority for the Secretary of the Interior

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[3] We are encouraged by two recent developments which suggest that the Justice Department is showing a measure of interest in the energy industries. First, the Justice Department argued as an intervenor in ICC proceedings that the rates requested for the transportation of Alaska crude oil would result in consumers paying at least $800 million each year in unjustified monopoly overcharges. The ICC agreed with the Jutice Department and refused to grant the high rates which the Alyeska owners had requested. Second, in a report to Congress and the President, the Justice Department concluded that consumers might pay excessive prices (or face artificial limitations of the natural gas supplies) if major gas producers are permitted to own or operate the Alaska natural gas transportation system. Accordingly, the Justice Department has recommended a prohibition on producer ownership or operation of the system.

[4] The Administration is very supportive of the bill's new bidding systems, which are intended to reduce or eliminate barriers to entry in OCS production by smaller and newer companies which cannot afford the substantial bonus payments required by the old system. The bill also contains Administration-endorsed provisions to require that the Secretary of the Interior consult with and give due consideration to the views of the Attorney General and the Federal Trade Commission in the formulation of all regulations affecting competition. In addition, the bill calls for an annual antitrust report (focusing largely on the effectiveness of the new bidding systems), and it requires that 20 percent of OCS production be offered at market prices to small and independent refiners.

[5] In the last 4 years alone, there have been 15 OCS lease sales, with a total of 1,134 individual leases being issued for a total of $11 billion in bonus payments. The OCS is expected to provide a large percentage of the new oil and gas which in the years ahead will have to be discovered, developed, and produced to help meet America's energy needs. In the immediate future, there may well be an average of six OCS lease sales per year, with each sale averaging 60–70 leases and bringing in bonus payments of $400 million to $800 million in addition to royalties. Each OCS lease sale, therefore, involves a substantial transfer of Federal energy resources.

to take appropriate and timely steps to ameliorate any likely anti-competitive effects.

There are several specific concerns which deserve close attention in an OCS lease sale antitrust review:

(1) *Regional concentration.*—There might well be adverse antitrust consequences if the same few companies which control most of the North Slope and Prudhoe Bay reserves and the Trans-Alaska Pipeline System were to acquire an inordinate share of the OCS leases off the coast of Alaska. Similarly, there might be cause for concern if an inordinate share of the OCS leases off California were to be issued to the one company which currently dominates all phases of the oil industry (ownership of reserves, production, refining, pipelines and marketing) affecting California. In one recent OCS lease sale, a single company acquired 30 percent of the leases issued. Whether that figure represents an inordinate share probably depends on the company's share of all reserves and production in the relevant region or regions of the country.

(2) *Joint ventures.*—Approximately 85 percent of Outer Continental Shelf leases are issued to joint ventures. Nonetheless, the Justice Department has never conducted a careful analysis of the producers' rationale for such a pattern of joint ventures—that they are necessary to raise capital, to spread risks and costs, and to enable smaller companies to participate in Outer Continental Shelf operations. Even if this rationale may properly apply to bonus bidding operations, it may not be applicable to Outer Continental Shelf operations under the new bidding systems created by the bill. Regular Outer Continental Shelf lease sale antitrust reviews would enable the Justice Department and the Interior Department to make relevant determinations and to establish appropriate guidelines with respect to Outer Continental Shelf joint ventures.

(3) *Pipelines.*—In testimony before the Outer Continental Shelf Committee, the Justice Department stated that Outer Continental Shelf pipelines present the opportunity for anticompetitive abuse in that (1) "vertically-integrated" petroleum companies are able to use Outer Continental Shelf pipelines to take monopoly profits despite the appearance of government regulation and (2) the owners and operators of at least some Outer Continental Shelf pipelines have a financial incentive to constrict pipeline capacity and throughput. Some of the problems associated with Outer Continental Shelf pipelines may be redressed through appropriate regulations. However, an antitrust review would enable the Justice Department and the Interior Department to identify specific leases where pipeline antitrust problems are most likely to occur, so that necessary modifications may be made in such leases prior to their issuance.

(4) *Barriers to entry.*—The bidding systems, pipeline control, and perhaps regional concentration and joint venture patterns have created and may continue to maintain barriers to entry into Outer Continental Shelf operations, particularly by smaller and newer companies. A careful antitrust review might identify other

barriers to entry in Outer Continental Shelf operations, or in other phases of the oil and gas industries as a result of Outer Continental Shelf policies and leasing.

Of course, a well-designed and well-implemented antitrust review might reveal other antitrust problems and other adverse effects likely to result from Outer Continental Shelf lease sales. The amendment we will offer, therefore, would require an antitrust review whose form and nature would be determined by the Attorney General and the Secretary of the Interior.

Because the Justice Department has an inadequate data base and will be starting almost from scratch, the first few Outer Continental Shelf lease sale antitrust reviews would probably have to focus primarily on any readily apparent anticompetitive conditions (such as any company acquiring an obviously inordinate percentage of the leases being issued). As the Justice Department over time develops a reliable data base and builds an expertise in the leasing of federal energy resources, the antitrust reviews should become more sophisticated and the Justice Department should be able to "flag" different kinds of anticompetitive situations within the very limited time period provided.

In order to minimize the overlapping of information-gathering by federal agencies, the amendment would authorize Justice Department access to all relevant data in other agencies, in a manner that will protect any confidential or proprietary information.

Finally, the amendment will expressly protect the right of the Government to bring subsequent cases based in whole or part on Outer Continental Shelf leases, even if the Justice Department fails to challenge a lease or set of leases at the time of issuance. A set of leases may not appear likely at the time of issuance to have future anticompetitive effects, but may later actually have anticompetitive effects or may become part of a pattern of monopolization. It is essential that the Government have the authority to take appropriate action whenever such effects or pattern become apparent.

Whether there is effective competition in the energy industries and whether energy consumers will enjoy the full benefits of such competition in the years ahead will depend largely on whether the 95th Congress is willing to require that federal antitrust officials pay proper attention to the yearly disposition of billions of dollars worth of Outer Continental Shelf energy resources. Adoption of the antitrust review amendment will help identify and minimize any anticompetitive forces affecting Outer Continental Shelf leasing, development and production.

JOHN SEIBERLING.
CHRISTOPHER J. DODD.
JOSHUA EILBERG.
GEORGE MILLER.
MO UDALL.

XIII. Additional Views of Representatives John F. Seiberling and Morris K. Udall

COMMON CARRIER PROVISIONS FOR OCS OIL PIPELINES

Pipelines are usually the cheapest and most efficient method of transporting OCS oil, and it is usually economically inefficient to build more than one oil pipeline from any OCS area onto shore. Nonetheless, the Government currently grants monopoly rights-of-way authorizing any private company (1) to build and operate a pipeline for the transportation of oil it has produced on federal OCS lands and (2) to refuse to transport OCS oil produced by other companies. The exercise of this right to deny access makes it necessary for other companies to build their own pipelines or use more expensive modes of transportation (such as barges). The result is unjustifiably high transportation costs, which are likely to be passed along to consumers in the form of higher prices.

When the House considers H.R. 1614, we will offer an amendment to require that OCS oil pipelines be operated as common carriers, like other oil pipelines on Federal lands.[1] The effect would be to require that OCS oil pipelines accept, convey, transport, or purchase at reasonable rates and without discrimination OCS oil delivered by other companies. The aim of the amendment is to promote transportation efficiency, thus reducing producer costs and consumer prices.

John Seiberling.
Mo Udall.

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[1] Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185) requires that oil pipelines through Federal lands (except Indian lands, National Park Service lands, and OCS lands) be constructed, operated, and maintained as common carriers, and that the owners of such pipelines accept, convey, transport, or purchase without discrimination all oil delivered to such pipelines. The Naval Petroleum Reserves Production Act of 1976 requires that any pipeline in the vicinity of a Reserve which accepts, conveys, transports, or purchases any Reserve oil must operate as a common carrier insofar as all Reserve oil is concerned.

Section 5(c) of the OCS Lands Act of 1953 provides that the Secretary of the Interior may grant pipeline rights-of-way "for the transportation of oil * * * upon the express condition that such oil * * * pipelines shall transport or purchase without discrimination, oil * * * produced * * * in the vicinity of the pipeline in such proportional amounts as * * * the Interstate Commerce Commission * * * may * * * determine to be reasonable, taking into account, among other things, conservation and the prevention of waste." Congress intended to exempt from this form of common carrier status only true operating lines (i.e., those operated wholly within the bounds of a single lease), just as such lines had been exempted from the common carrier requirements of the Mineral Leasing Act of 1920. Unfortunately, Interior Department regulations have expanded the operating line exemption to the point where virtually all OCS pipelines (including most pipelines which transport OCS oil to onshore locations) are exempt from common carrier status and obligations. Our amendment would limit the exemption to true operating lines.

XIV. Supplemental Views on Interfuel Competition

We support the work of the ad hoc committee to revise the Outer Continental Shelf Lands Act of 1953. During the committee's consideration of H.R. 1614 we were particularly concerned that the leasing procedures be amended to encourage competition and allow for the greatest exercise of the forces of a free market system.

Throughout the history of public lands development, Congress has supported the goal of developing publicly owned resources competitively by leasing to the broadest possible class bidders. Unfortunately, this goal has not always been attained, having been undercut by many of the bidding systems devised, especially the cash bonus system used in OCS leasing.

We commend the committee for the modifications made in the leasing system to limit the use of the cash bonus system. We recommend a further amendment to allow potential bidders to acquire new rights to only one of three of the major federal energy resources: offshore oil and gas leases, Federal coal leases, or Federal uranium permits. Such an amendment would encourage competition between fuels and create price competition between alternative fuels. It would also prevent any company, any group of companies or any industry from using federal energy resources to strengthen in an anticompetitive manner the control they may exercise over energy markets.

The development of offshore oil and gas is a complex, high risk, and capital-intensive activity. Many who develop oil and gas onshore do not and will not have the technological or capital requirements necessary to develop OCS resources, regardless of the provisions of the OCS Lands Act. However, our past leasing practices have increased the capital barriers necessary to obtain OCS leases and have helped consolidate the control of the largest oil companies. Hopefully this legislation can help rectify the current anticompetitive situation. As now reported, H.R. 1614 limits the use of the cash bonus system to prevent an increase in market shares held by the largest companies. We believe that limiting potential bidders to only acquiring rights to OCS, Federal coal, or Federal uranium would prevent oil companies from translating their control of oil to other portions of the energy industry. Such competition should lead to more efficient production of energy resources.

Development of federal energy resources must be managed by conforming policies to ensure competition between fuels as well as within individual energy markets. Outside state boundaries, the OCS is a totally Federal energy holding whose development provides an opportunity to inject competition into the energy industry. As Federal resources account for an increasing percentage of our nation's energy production, the policies for developing Federal OCS, coal and uranium supplies should be consistent, both with each other and with our national energy policy. Given the anticompetitive effects of past OCS

leasing, H.R. 1614 provides an appropriate opportunity to promote competition within the energy industry. This is especially true as we are now turning to alternative sources of energy.

The 95th Congress is also considering legislation to implement the President's national energy policy. The administration's program contemplates the increased use of coal and uranium as our supplies of petroleum diminish. Many of us who support the President's policy are hesitant to allow these new sources of energy to be developed by the same conglomerates that now control petroleum supplies. Because a major portion of remaining energy resources are publicly owned, we believe the Congress has an opportunity—and an obligation—to create a competitive energy future for our Nation. Federal energy resources offer our nation a variety of alternative energy sources that can best be developed by energy companies competing to match energy needs with the most efficient energy sources and at a price that is the least expensive economically, environmentally, and socially to the country.

MORRIS K. UDALL.
JOHN F. SEIBERLING.
CHRISTOPHER J. DODD.
GERRY E. STUDDS.
JOSHUA EILBERG.

XV. Additional Views of Hon. William J. Hughes

The committee has taken an important step forward by addressing the issue of onshore impacts of offshore oil development, especially with regard to financial assistance to affected coastal states.

The Congress attempted to deal with this issue in 1976 with the enactment of the Coastal Zone Management Act Amendments, but the results have left something to be desired. In particular, the levels of funding, the requirement for State and local governments to seek loans, and the existing formula have undermined the effectiveness of the program.

The committee has addressed these problems by raising the authorization from $50 million to $125 million per year, eliminating the loan requirements, and establishing a new formula. However, a number of important questions still remain, and the Committee action may in fact have created new problems.

THE FORMULA

Under existing law, coastal energy impact program funds are distributed to States under a formula that attempts to match impacts with financial assistance. One-third of the money is distributed on the basis of leasing, one-third on the basis of increased energy worker population, one-sixth on the basis of production, and one-sixth on the basis of oil and gas landed within the affected State.

Under the new formula proposed by the committee, 50 percent of the available funds would be allocated on the basis of newly-leased acreage, and the remaining 50 percent would be allocated on the basis of oil and gas landings.

This proposed new formula is laudable in several respects. It helps the frontier areas by placing a great deal of weight on new leasing, and it also eliminates the employment factor which has been a difficult and questionable criteria to work with.

However, placing 50 percent of the emphasis on oil and gas landings may very well have the effect of denying assistance to the very States that the program is designed to help. It means that a State could have a great deal of OCS activity and related impacts, but it would not receive any funds under the formula if it did not also have landings.

For example, it is entirely possible, and in some cases probable, that a State may be greatly impacted by offshore development, even though no oil or gas is actually landed. The oil and gas produced off the coast of that State could easily be shipped by tanker or pipeline to some other State for refining. In such a situation, the State refining the oil would receive all the assistance, although much of the impacts would be in the State near production area.

It has been estimated that, in the mid-Atlantic region, between 5,600

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and 20,000 people will move into the area, depending upon how much oil or gas is found. With them will come the need for new housing and public services (such as water and sewer, police and fire protection and waste disposal). Expanded education facilities, health care, and a whole range of other activities will be necessary. This will put serious strains on the tax base.

In addition, new facilities related to offshore production will arrive, such as onshore operations bases, offices, cement and mud suppliers, warehouses, tool rental companies, helicopter pads, dockage, wireline companies, gas lift companies, logging and perforating companies, machine shops, trucking firms, supply stores, downhole equipment companies, diving services and others. The combined effect of all these facilities and increased population will be to create major impacts, regardless of whether OCS oil or gas is landed in the area.

I favor retaining the committee's recommendation that 50 percent of the funds be distributed on the basis of newly leased acreage. However, the other 50 percent should be distributed as follows: 25 percent on the basis of oil and gas landings, and 25 percent on the basis of offshore production, regardless of where it is landed.

This would assure that funds are distributed in a way that most closely reflects that actual impacts experienced by coastal States from offshore development.

THE 2-PERCENT FLOOR

The amendment approved by the Committee introduces the concept of regional impacts by providing a minimum of 2% of the funds to any State in the same region where other States are entitled to funds.

The concept of a funding floor is a good one, but the approach approved by the committee is too broad, and it would most likely not have the desired effect of ameliorating the undesirable results of OCS development.

The definition of region is much too all encompassing. The east coast region, for example, includes every State of the Eastern Seaboard except Florida.

This approach assumes that a lease sale off the Georgia Coast will have an impact on Maine and vice versa. Yet, the impact of a Georgia lease sale on Maine would probably be no greater than the impact in Montana.

In contrast, the same Georgia lease sale would not entitle Florida to the 2 percent minimum, since Florida is not included in the Atlantic Region under the definition. In other words, a sale of the Georgia Coast would net Maine 2 percent of the funds, but Florida would not qualify for the 2 percent minimum.

A more appropriate approach would be to make a State eligible for the 2 percent floor only in those years in which a lease sale is held in the immediate vicinity of such State.

The essence of the coastal energy impact program is to provide States with aid to ameliorate the onshore impacts of offshore development. It is important to require some nexus between impacts and aid if we are to preserve the integrity of the program.

ENTITLEMENT VERSUS AUTHORIZATION

The language approved by the committee increases the authorization for the coastal energy impact program from the present $50 million per year up to $125 million per year.

However, this approach will still require the program to be subject to the annual appropriations process. Inasmuch as this program has never been funded at a level even close to the existing $50 million authorization, the committee's action in increasing the authorization will have little positive impact.

I believe it is important to initiate a program that will automatically share OCS revenues with affected coastal states similar to the revenue sharing program that is now in effect with respect to States affected by coal leasing.

In 1975, $100 million was distributed to States impacted by Federal coal leasing activities, and it is estimated that this figure will rise to $177.8 million in fiscal 1978. Only last year, Congress increased Federal mineral leasing revenue sharing from 37½ percent up to 50 percent.

Yet, with respect to OCS leasing—a much broader program with equal if not greater impacts—there is no similar revenue sharing program.

In the past, there have been two prime motivations behind every OCS lease sale—the interest of the oil companies, and the desire of the Federal government to obtain revenues. Unfortunately, neither of those two factors take into account the interests of the coastal States, particularly in the previously undeveloped frontier areas, that will bear the brunt of OCS development.

Decisions made in Washington as to where and when to lease will result in clear and well documented adverse burdens on the coastal States, with no corresponding benefit. These decisions will net the Federal treasury between $2 billion and $4 billion per year, with only a minute fraction of that amount going to affected coastal States.

In Committee, Congressmen Breaux and Treen and myself proposed a program for sharing 20 percent of OCS revenues, up to a maximum of $200 million per year, with affected coastal States. Such a program would put the oil producing regions on a par with the coal producing regions in receiving a share of Federal mineral leasing revenues to cope with adverse impacts brought about by energy production.

The coastal States are prepared to do their share to provide the Nation with the energy resources we need to maintain our standard of living and keep the wheels of industry turning. However, it is only equitable that these States share in some modest degree the proceeds of OCS leasing activity.

WILLIAM J. HUGHES.

XVI. Dissenting Views of John Breaux

I would like to bring to the attention of the full House the many reasons I have found it necessary as a majority Member of the House Ad Hoc Select Committee on the Outer Continental Shelf to file dissenting views to this report.

I might begin my views by pointing out to the House that on most every major issue considered by the committee there was seldom a vote differential that brought passage or failure of an amendment by more than two and most always one vote margins.

It was apparent from the onset of our work that the majority aimed their efforts at changing present workable procedures governing the exploration of oil and gas regardless of whether a change was justified or not. Anyone following the proceedings of this committee for the past several years would easily detect that action taken to change existing regulations was taken merely for the sake of change. A workable Outer Continental Shelf act which had successfully supplied this nation with adequate supplies of energy while bringing a fair return to the Treasury would be completely dismantled under the guise of lessening big oil's influence and profits. Many of our nation's most inquisitive minds sat before the committee to testify to the success of our nation's energy efforts, and were excused as being sided with the oil interests. Many researchers with years of experience layed out scientific facts associated with the discovery of oil and gas to a Committee whose majority rejected these findings on the basis that the industry recouped too great a share of profits from oil and gas leases, even though documented data including federal records showed a lesser degree of profit accorded to energy industries than many leading U.S. corporations acting in other consumer areas.

Contrary to the voluminous record of facts gathered during our exhaustive hearings process and Floor defeat of this measure during the last Congress, the majority of the committee felt compelled to report out a bill, even more restrictive than the previously defeated one, adding months of bureaucratic delays and unwarranted restrictions that will have a profound negative effect on the future of oil and gas exploration and development in the United States.

The ironies associated with House consideration of this bill are many. The majority of the committee sought out amendments to restrict operations of the major oil companies on the Outer Continental Shelf. They passed amendments to restrict the use of current bidding systems to obtain Outer Continental Shelf leases to 50 percent of the time, causing the remainder of leases to be bid using the new, untried and possibly unworkable systems. Also passed were amendments to force the industries to turn over to the Federal Government all geological and geophysical data, which represents the competitive lifeline for the various companies operating in the Outer Continental Shelf. The

bill is stuffed with features to delay activities on the Outer Continental Shelf, including new reporting requirements; state, local, and federal review periods; environmental impact statements; and lease cancellation provisions afforded the Secretary. OSHA was extended to divers on the Outer Continental Shelf instead of allowing adequate protection under the Coast Guard to continue, a move which divers said could endanger their very operations and health due to OSHA's total lack of expertise in this area. To ice the cake the committee finally allows for the federal government to get into the oil and gas business by calling for Federal exploration.

If all of that doesn't sound too bad, allow me to present the ironies. In trying out all of these new fangled approaches the committee's majority constantly used as the basis of their argument the contention that their actions were to help the small companies who get pushed out of the current process by the "major" oil companies. As a Member of Congress, I represent the majority of all the small oil companies and associated service companies in the United States, those companies whose names you wouldn't even recognize, but who are the backbone of oil and gas exploration and development.

If passed, this legislation will destroy many of the small companies now participating in Outer Continental Shelf operations. *The irony*—small companies can't afford to take as great a risk in the leasing process and don't have the manpower to adapt to the new and untried leasing systems mandated by this bill. *The irony*—retrieval of interpretive data by the Federal Government completely destroys the value of independent geological firms whose sole existence depends on being able to market their confidential interpretations of data gathered on a particular lease. I don't have to explain how confidential our bureaucrats will hold this data the companies will be forced to release to the Government. *Irony*—OSHA extended to divers offshore represents the kiss of death to these very small firms who will never be able to cope with the burdensome restrictions associated with OSHA review. They testified that this change could be detrimental to the health and safety of the diver offshore. *The irony*—built-in delays fly right in the face of what we must be doing to turn around our critical energy posture. With each new built-in delay in this bill a direct increase in imports can be assumed leaving us more vulnerable to OPEC nations for our very economic growth and security. *The irony*—a Federal oil and gas exploratory program, the first step at nationalization of many facets of our private enterprise system as we know it today. I can't feel that the Government, accustomed to reacting rather than acting, will plan responsibly for our energy security for the future.

One final area of particular concern to all coastal states is that of receiving equitable treatment for allowing energy development to occur off their shores. This would be in line with the treatment afforded our interior states who share 50% of all lease receipts to the Federal Government for mineral leases within those states. Congressmen Hughes, Treen and I offered a reasonable approach to establish a coastal energy impact fund to provide grants to coastal communities experiencing various impacts due to stepped-up oil and gas activity. One purpose was to return to the intent of Congress when the Coastal

Zone Management Act first passed the House with a similar fund. Consequently, the previous administration, acting through regulations influenced by OMB, reconstructed the act to provide a mere token fund for use by these states. The committee, continuing in irony, narrowly passed a measure similar to that favored by the past administration which represents a total lack of concern for coastal communities who share the risk of providing for this Nation's energy.

This is legislation that the Congress would be wise to defeat. This is legislation that the Interior Department, new faces only working on this matter for a few months, is supporting as a facelift. It's only window-dressing, covering-up a serious act which will have negative implications for our country in the long run.

I plan to bring to the attention of the House these critical matters and hope that reason will prevail in the end.

Sincerely,

JOHN BREAUX.

XVII. Minority Views

Nearly a year ago, the House rejected the Conference Report on S. 521, a bill "to establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes". Because of the need to establish a workable management policy for OCS activities and to insure that the environment will be adequately protected, the Ad Hoc Select Committee on the Outer Continental Shelf was reconstituted early in this Congress.

It was the hope of the minority that the wisdom of the Congress in rejecting last year's bill would result in improvements in the work product of the Ad Hoc Select Committee, H.R. 1614. Sadly, this has not been the case. Once more we find ourselves in opposition to the legislation produced by our committee.

H.R. 1614 as ordered reported is a complicated, technical bill which does not have the capacity to carry out the purposes which are set forth in its first title. The committee concentrated so hard on shaping individual portions of the bill that it lost sight of its goals and failed to consider the overall impact of the whole bill. Instead of achieving national energy goals and maximizing self-sufficiency, the procedures necessitated by enactment of this bill would engender economic uncertainties and actually reduce incentives for private enterprise to undertake the needed expansion of OCS activities. The effect of delaying domestic OCS production is to maximize the threat to the marine and coastal environment from oil spills from tankers bringing in foreign oil and the opportunity for economic and political pressures from abroad on the domestic and foreign policies of our Government.

After more than 2 years of study and hearings, the record clearly shows that the national interest would be best served by encouraging the location and production of our offshore resources. Recent studies warning of possible adverse changes in the climate of the earth as a result of greatly increased use of coal as an energy source place added emphasis on the need for maximizing petroleum production until sound alternative energy sources can be put into use.

We favor the careful revision of the Outer Continental Shelf Lands Act (OCSLA) of 1953. Certain parts of the Act need updating and some new sections are needed in light of changes in our society and laws during the 24 years since its passage. We will continue to take this positive approach in offering constructive and necessary amendments when this legislation becomes the subject of action by the House. The confusing, unnecessarily expensive, unworkable and counter-productive parts of H.R. 1614 can be removed and a coherent framework for the control of OCS activities created. We are committed to the accomplishment of this goal.

Sections of H.R. 1614 Requiring Amendment

Specific objections to H.R. 1614 as reported are set forth in detail below.

OSHA jurisdiction expanded—section 21

The Outer Continental Shelf Lands Act (OCSLA) presently gives the Coast Guard the duty to regulate "safety equipment and other matters relating to the promotion of safety of life and property". The Occupational Safety and Health Act in section 4(b)(1) requires that the Occupational Safety and Health Administration of the Department of Labor act to insure worker safety in areas where agencies with specific grants of jurisdiction have not acted to carry out their responsibility. However, that Act clearly states that the exercise of power by the Department of Labor is only done on a stopgap (interim) basis and that no permanent concurrent jurisdiction was granted to the Department of Labor. The legislative history of the Occupational Safety and Health Act makes it very clear that the Congress rejected the idea of granting the Department of Labor any permanent, concurrent jurisdiction where other agencies have statutory jurisdiction for health and safety matters. The action of the Ad Hoc Select Committee would, if enacted into law, result in a significant enlargement of OSHA's role in OCS regulations. It would create the unwise and untenable situation where there would be two "lead" agencies charged with regulating one kind of activity. Two heads may be better than one, but not when they're attached to the same body. Such an arrangement would incredibly complicate the process of regulation and delay the implementation of necessary new regulations. Also, when conflicts arise between the jurisdictions of administrative agencies, the Office of Management and Budget would undoubtedly make the decision as to which agency's work would take precedence over the other. The Minority feels that it is the responsibility of the Congress to make determinations of this sort and that we should not unthinkingly abdicate the authority to OMB.

In the matter of expertise in promulgating and enforcing occupational safety and health requirements in the marine environment, the minority feels that the Coast Guard is clearly better qualified than OSHA. Throughout its long history, the Coast Guard has been charged with the protection of life at sea. There is a definite difference between operations in the marine environment where the Coast Guard has the expertise and a factory on land where OSHA has been operating. The minority will offer an amendment restoring clear lines of responsibility in this area. The Coast Guard would be kept in its present status of lead agency and OSHA's present status would also be affirmed. Most importantly workers would be protected by those best able to help them.

Mandatory use of bidding systems—section 205

The minority has repeatedly endorsed the idea that the Secretary of the Interior should have the option to utilize bidding systems other than those presently authorized under law. In Committee we offered

an amendment which would have given the Secretary the power to use any bidding system to sell Outer Continental Shelf leases. There was no limitation on his use of any bidding system because we felt that he should be free to use any system that seemed best for a particular lease tract or tracts. Though no one disagreed with this principle, the amendment failed because it did not mandate the use of new bidding systems! We submit that it is counterproductive to impose before the fact absolute restrictions on the use of any bidding system. It is also unwise to include in the law detailed descriptions of new bidding systems. If the Secretary finds a part of such a bidding system unworkable when he tries to put it into effect, Congress would have to act before the bidding system could be used. To require congressional approval before the Secretary can vary from prescribed percentages of usage of new bidding systems significantly compounds the error of requiring the percentage usage scheme in the first place. The Secretary's ability to plan and carry out a coherent leasing program is definitely inhibited by having to get even a small variance from the statutory formula approved by Congress. We hope that the House will see the wisdom of allowing the Secretary to pick the bidding system(s) to fit the requirements of the lease sale area and adopt an amendment to that effect during floor consideration of H.R. 1614.

DUAL LEASING—SECTION 205

A major new defect has been added to the legislation in the form of the concept of "dual leasing". This is not a new bidding system, but rather a major revision in the way the government conveys property rights. It is not a new method of acquiring a lease, but a new type of lease altogether.

Under this new proposal, the Secretary of the Interior would be able to issue two new types of Outer Continental Shelf lease: the exploration lease, and the development lease. The winner of the exploration lease would be entitled to a stated percentage of the profits made by the winner of the development lease from deposits discovered by the explorer.

In some way, the Government would decide that exploration on a particular tract was finished and that it was time to offer the right to develop the resources on that tract. This is never clear because exploration commonly continues long after development and production begin. The winner of the exploration lease will want to continue for as long as possible to maximize his chances and amount of future profits.

The Government would, in some unspecified way and to an unspecified extent, share the cost of exploration through payments to the winner of the exploration lease. The lessee and the Government would apparently sit down behind closed doors after the exploration lease was sold to agree on how much the exploration should cost. This would, of course, also determine how much the lessee would be paid by the Government. This is really a scheme for getting the Federal Government into the oil exploration business on a lease by lease, well-by-well basis. It would be a large and costly operation simply to insure that the Government was not being cheated.

Paying the exploration lessee is not the only cost involved in dual leasing. There are additional features which are costly both in terms

of time and money. Armies of new bureaucrats will be needed to police this scheme and one another. Two long and costly lease sales will have to be held for each tract leased where this system is used. Another "major Federal action" is created which could require another long and costly environmental impact statement and serve as another source of law suits.

This new approach to OCS leasing is not simply another bidding system. It also is not the same as the system now employed in Canada. We have only touched on a few of the major problems which would be created under this proposal. It gives rise to so many uncertainties, would cause so many delays and would involve the government in the oil business to such a large extent that it should be eliminated from this legislation.

FEDERAL EXPLORATION—SECTION 206

Prior to the action of the Ad Hoc Select Committee, there had been some controversy over whether or not the Secretary of the Interior has the power to undertake exploratory drilling under the Outer Continental Shelf Lands Act. Section 11 of that act reads as follows:

> SEC. 11. Geological and Geophysical Explorations.—Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the Outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area.

The committee print of H.R. 1614 adopted several changes in the present wording of Section 11 and proposed numerous new subsections to that part of the Act.

Changes made in H.R. 1614 to the present wording of Section 11 include adding the Secretary of the Interior as one specifically empowered to conduct geological and geophysical exploration on the shelf and adding the words "including core and test drilling" to make clear the extent to which the Secretary and others could go in their activities under this section.

Among the various totally new subsections proposed for addition to section 11 is one in the form of a specific grant of authority to the Secretary of Interior which would have allowed him "to contract for exploratory drilling on geological structures which the Secretary determines should be explored by the Federal Government for national security or environmental reasons or for the purpose of expediting leasing, exploration and development." The intent of the drafters of the committee print was "that the Secretary be specifically given the discretion to authorize exploration by contract". The Ad Hoc Select Committee voted to remove the proposed Section 11 (h) and thus deny the Secretary the power to contract out for Federal Outer Continental Shelf exploration activities. If, prior to this action by the committee, there had been some controversy over the way in which the Secretary could undertake exploratory drilling in light of changes proposed in section 11 of the act, there should be none afterward.

If H.R. 1614 as passed by the select committee becomes law, the Secretary could, provided funds were appropriated, send Interior

Department employees out to conduct exploration. He could not contract out and have others do it for him because this power has been specifically proposed, specifically debated and specifically rejected by the select committee. This specific rejection eliminates any possibility that the power to contract out can be inferred to be a part of the general grant of power to the Secretary to carry on exploratory activities.

The Minority does not favor any federally-financed and directed exploration for oil and gas reserves. All Secretaries of the Interior since passage of the Act have apparently agreed with us as no such activities have been conducted to date. The economic burden that federal exploration would impose directly on the backs of the already overburdened taxpayers cannot and has not been justified. The educated guess as to the amount of resource present made after billions were spent on federal exploration would not be significantly better than the educated guess which could be made by the Secretary after reviewing all of the data derived from all of the exploratory activities of all the oil companies given permits under the Act. The Treasury should not be depleted to carry out an activity that will never be cost-effective.

Secretary Andrus, unfortunately, has repeatedly indicated his intent to depart from the precedent set by previous Secretaries and go ahead with a program of federally funded exploration instead of holding that power in reserve. Last Congress the House of Representatives voted to recommit a bill very similar to H.R. 1614 because of a fear that it provided for federal exploration. Proponents of that legislation argued that it did not, in fact, provide for federal exploration and stated that they were against that concept. H.R. 1614 clearly contains explicit provisions under which Secretary Andrus intends to carry out federal exploration. This legislation must not be passed with such provisions in it.

LEASE CANCELLATION AND COMPENSATION—SECTION 204

H.R. 1614 is inferior to the bill passed by the select committee in the last Congress in the area of compensation for the taking of property rights involved when a lease is cancelled. H.R. 1614 attempts to set before the fact statutory factors to be used exclusively in determining the amount of compensation to be paid a lessee in some unknown future situation. The bill would also require the Secretary in some instances to offer an amount of compensation less than "the fair value of the cancelled rights as of the date of cancellation." The supporters of this unfair concept argue that it is perfectly all right for the government to take someone's property without paying fair value for it if such is provided for in the contract under which the Government conveyed those rights to him in the first place. One does not have to go beyond elementary contract law and elementary constitutional law to discover the fallacy of their argument.

First, a contract cannot exist nor a severable term be binding if it is not the product of a meeting of the minds of the parties involved. Mutuality of agreement cannot be imposed by one party. Second, the Constitution clearly requires that where the government takes away the property rights of a citizen, that citizen must be paid just com-

pensation. The Congress cannot simply pass a law and direct the Secretary to ignore the requirement placed on him by the Constitution. Surely the first time a lease would be cancelled and the lessee paid less than just compensation, the lessee would go to court and secure his rights. The only thing this legislation should contain with regard to the amount of compensation to be paid (when compensation is to be paid) is "that such cancellation shall not foreclose any claim for compensation as may be required by the Constitution of the United States."

BASELINE STUDIES—SECTION 20

H.R. 1614 contains provisions which drastically alter the form and content of what has up to now been a valuable scientific tool. The baseline, or benchmark, study is one of several tools used by ecologists in their efforts to understand population fluctuations of species in their natural environment. The changes made in H.R. 1614 have come about because of a basic misunderstanding of the role of a baseline study. If enacted into law, they would cause needless and costly duplication of scientific effort and, worst of all, prevent the complete inventory of species present in Outer Continental Shelf areas to be leased.

This inventory is really what baseline studies are supposed to do. To be most useful, such studies must be undertaken as long as possible before man's activities begin in a prospective lease area. This can be done without in any way delaying the Secretary's leasing program only if we do not confuse a baseline study with an environmental impact statement. Unfortunately, this is exactly what H.R. 1614 does.

If the National Environmental Policy Act requires the preparation of an Environmental Impact Statement in a lease area, such an EIS would be prepared substantially at the same time that baseline studies would be under way. An EIS is, of course, specifically designed to predict all impacts of a proposed governmental activity on the environment. Under the present provisions of H.R. 1614, the completion of a baseline study would require much of the same work as that which would be done by the Interior Department for the EIS. This would be costly in terms of money but also in that it would keep some of the very limited number of scientists and ships available from being able to complete baseline studies in all areas to be leased.

It is not in the public interest to waste time, money and human resources to conduct duplicative studies. The combination of Environmental Impact Statements, baseline studies and subsequent monitoring studies will provide all the information needed in a timely and cost-effective way. The five-factor mini-EIS required under H.R. 1614 should be deleted from the bill and a true baseline study and monitoring program put in its place.

BEST AVAILABLE AND SAFEST TECHNOLOGY—SECTION 21

The concept of "best available and safest technology" is found in H.R. 1614 primarily with reference to the carrying out of the national policy described in Section 202 of the bill and which would become part of new Section 3 of the Outer Continental Shelf Lands Act.

(6) operations on the Outer Continental Shelf should be conducted in a safe manner by well-trained personnel using

technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.

What does "best available and safest technology" mean and can it be implemented to most effectively carry out our national policy goals? Under H.R. 1614, the Secretary of the Interior would have to pick out the "best" and "safest" way to do things which are now done well and safely in any one of several, modern ways. The Secretary would for instance have to examine all blow-out preventers on the market and determine which excelled all others in its ability to protect the safety and health of workers and preserve the environment. This is an impossible, delay-causing and unnecessary undertaking. The task is impossible because no consensus exists even as to whether down-hole or surface blow-out preventers are best, let alone which of the numerous and successful designs now in use is best. Much of the effectiveness of any technology has to depend on the competence of the men operating the machines. Human error can render useless the most effective machine. The development of techniques to prevent or cope with blowouts or other dangerous situations and the setting of training standards for personnel are not covered in the "best available and safest technology" approach as found in H.R. 1614. In the blowout off Norway in the North Sea last year, the equipment being used was state-of-the-art equipment. The new equipment could not prevent the accident that happened.

Delay in implementing the law would be caused by forcing the Secretary to try to find the one "best" and "safest" technology of all those now in existence. Once determined the so-called "best" and "safest" machine would be the only one permissible on new operations and this would surely result in law suits being brought by manufacturers of competitive devices arguing either that they really have the "best" and "safest" technology or that the Secretary's decision was arbitrary and capricious. As the Secretary's decision would also create a monopoly in the manufacturer of the "best" and "safest" machine, further development of others' machines would be inhibited by putting their manufacturers out of business. Small companies with no other source of income would not survive. These delays and uncertainties would cause economic decision-makers to be very unsure as to which machines they could plan to use as part of planned future operations. What is "best" and "safest" today when they have to commit themselves to multimillion dollar decisions may not be so regarded in a month or a year. No secure decision could be made and new production would be greatly reduced.

The bad effects of jousting with the "best available and safest technology" windmill are more pronounced because it is an unnecessary exercise. The far more commonly used and sound approach in encouraging the use and development of new technology is to set standards which must be equaled or exceeded before a product is found acceptable for use. The setting of performance standards designed to implement national policy would not be as time-consuming, subjective or controversial as the picking of one "best available and safest technology".

It would not create a monopoly and slam the door in the face of new initiatives by small companies. Any machine that met or exceeded standards could be marketed and used to make profits to finance further research and development. Those charged with planning the building of new facilities could do so with much more certainty. They could choose a machine representing the present state of the art of one technology and be assured that it would continue to at least be acceptable for a reasonable period of time.

The minority will offer a floor amendment which would require the setting of technology standards to implement our national policy goal plus emphasizing the need for well-trained personnel acquainted with precautions and techniques designed to maximize the effectiveness of the machines they operate. Technology develops most effectively in response to strong demands and in a climate where no possible avenue of advance is cut off by arbitrary bureaucratic action. The designation of one "best available and safest technology" would be just such an action.

The utilization of new technology is best assured by a combination of economic, legal and political considerations. Maximization of profits is achieved through the use of the safest as well as the most efficient machinery because losses through law suits by employers or those damaged when product is lost and through clean up costs are minimized. These incentives of the free market in combination with legislative action setting up standards for operations will provide the best way of implementing our national policy of protecting people and the environment while also providing needed natural resources.

CITIZEN SUITS—STANDING FOR JUDICIAL REVIEW—SECTION 23

Section 23 of the bill gives standing to private individuals to sue other private parties to compel compliance with the act, with regulations promulgated under the Act (of which there will be hundreds), and with the provisions of a lease or permit. Under normal rules of law, a lease is a contract between a lessor and a lessee which gives rise to rights and duties between the parties which sign it. Third parties do not have the right to stand in the shoes of either party to a contract. H.R. 1614 would authorize third party interference with contract rights and open the door to harassment of a lessee by any one of 200 million citizen attorneys general.

The bill should require a showing that there is a substantial probability that a party will suffer damage before such party can have standing to sue. This would allow the court to reject frivolous suits on the basis of a reasonable test. Instead, the language of the bill will not allow the court to consider the probability of damage or other effect in determining who should be granted standing to sue.

There are many groups in areas adjacent to the Outer Continental Shelf which already have sued or are suing to stop OCS development. A prime example is the suit that sought to prevent further development of the Santa Barbara Channel. In light of this and other such developments, the threat of numerous, often frivolous, law suits seem more real and threatening than it did last year.

If a government official is not enforcing the law, the normal process of mandamus is sufficient. Nothing else is needed to protect the citizen from a Secretary who will not do his duty. This should remain the way for a citizen to seek compliance with OCS regulations and lease terms. Under the present provisions in H.R. 1614, however, we grant standing to an excessively broad class of plaintiffs not normally granted standing and thereby run the risk of their undue interference with and delay of the orderly development of needed Outer Continental Shelf resources.

RESTRICTIONS ON EMPLOYMENT—SECTION 29

This section attempts to create by fiat what is sometimes entered into as a limited contractual agreement between an individual and his employer to preclude the employee from disseminating trade secrets or using secret skills to the detriment of the employer who taught him. Courts have been consistent in their narrow construction of such contractual agreements. The incredibly broad restrictions sought to be imposed under this amendment would surely never be upheld in court if challenged. It is not part of any present employee's contract and is unconscionably broad as to any future employees.

This amendment would, for certain employees at or above GS–14, take away a fundamental personal right enjoyed by all Americans . . . the freedom to move freely from place to place using one's God-given talents, skills and hard-earned education in whatever legal way suits one. This is no effort to prevent any act which is in and of itself harmful or illegal. Rather, it is an attempt to limit the freedom of American citizens by taking away their right to seek gainful employment in their professions.

This section (Sec. 29) was added on the floor last year with no previous consideration in committee, and the Committee still has no testimony either for or against this language. The supporters of this provision point to a few, highly publicized instances where the ethics of some former officials have been questioned in the media. The supporters ignore both the bad effects of the provision and the overwhelming record of honesty and service to their country which has been compiled by persons who have come into the Government from industry. The bad effect of the provision would be felt in the form of a chilling effect on the essential access of the Government to people with valuable expertise and training. Thousands of people have served as governmental decision makers and advisors and only a relative few have committed unethical or illegal acts. The benefits the country has derived from the services of the majority of these people far outweigh the harm done by the few. Those who come into government often serve in jobs with pay far below that which they received in private industry. They are required to submit to background investigations and often have to divest themselves of assets earned through years of hard work.

Why do they do this? Their reasons vary but being of service to their country must always be one motivation. Some come at the behest of President or Cabinet officials, and others come as a result of Federal

programs designed to recruit people of great skill and experience. These people do not deserve to be treated as if they were some sort of fifth column trying to destroy the effectiveness of the government they serve. They do not deserve to be treated as though they were nothing more than potential criminals who must be subjected to strict controls. Under our system of government, we provide penalties for those who violate the law and betray the public trust. The provisions of section 29 of H.R. 1614 should be removed as they presume to punish the innocent rather than only the guilty and thereby violate one of our citizens' most fundamental personal freedoms.

PRODUCT SET-ASIDE—SECTION 205

The bill also contains a requirement that a lessee offer 20 percentum of his production to small or independent refiners. We fail to see why this was included as there has been no testimony on this provision; and the small and independent refiners are currently receiving over 20 percent of all offshore production. There is no need for this provision except to needlessly involve the Government in the affairs of private enterprise. It should, therefore, be removed.

FEDERAL-STATE LEASING—SECTION 18

Section 205 of H.R. 1614 contains provisions which would cause unnecessary problems and delays in the production of some resources found within 3 miles of the seaward boundary of a coastal State. The bill would in fact double State jurisdiction to a distance of 6 miles offshore where a geological structure is discovered underlying both State and the adjacent Federal lands. The fear that future development of resources under Federal leases might result in drainage of resources and revenues from some States is not well founded.

Section 7 of the present act provides a framework for equitable resolution of potential conflicts of this sort and in fact has been used to do just that in the Gulf of Mexico. Off southern California, the Department of the Interior voluntarily created a 3 mile buffer zone just beyond the State's 3-mile limit within which no Federal leases will be let unless the State leases the adjacent lands within its jurisdiction. This sort of arrangement under present law has protected both the State's and the Federal Government's economic interest. State designated environmentally sensitive areas have also been protected.

These provisions assume that petroleum geology yields much more exact information than it does. It is easily within the realm of possibility that the Secretary's geologists and the State's geologists will disagree as to whether or not any particular geological structure lies on both sides of the State-Federal border. It is almost a 100-percent certainty that they will disagree as to how much oil and/or gas will be found within their respective jurisdictions. It seems almost as certain, judging from past actions by some States, that such disagreements will be settled in court and injunctions against Federal leasing will be sought where there is disagreement as to the existence or exact location of a geological structure.

Another certainty is that, given the state of development of geological sciences and the propensity of governmental officials to maxi-

mize their revenues where possible, the escrow fund provided in the bill will be used. This would tie up all money taken in as a result of any lease sale that did take place for a long time. Some tracts produce far more than anyone expected and others produce far less. There is no way of knowing how much recoverable resource there is until the economics and geological facts of life halt production. Both the States and the Federal Government could use the revenues, but it would be difficult if not impossible for the parties or a court to find a factual basis upon which to divide them equitably.

In trying to solve a nonexistent problem, the bill has created several real ones. The minority will offer an amendment on the floor which will utilize present powers of the Secretary to make as certain as possible that both State and Federal Governments are protected from loss of revenues through the leasing activities of the other.

DOCUMENTATION, REGISTRY, AND MANNING REQUIREMENTS—SECTION 31

This section adds to the bill the requirement that "when [rigs are] required to be documented," the rigs would have to be documented in the U.S. to be eligible to work on the Outer Continental Shelf (if the rig is built or rebuilt 1 year after the regulation's promulgation).

46 U.S.C. 251 is the provision of law which governs documentation of vessels. Documentation of rigs and drilling vessels involved in OCS operations is not required by this provision because they are not involved in commerce or coastwise trade; they do not carry cargo or passengers. The Coast Guard has indicated that many are documented voluntarily but stress that there is no legal requirement that this be done. Therefore, this provision would have no effect in law and should be stricken from the legislation.

If the intent is to require documentation in cases not currently prescribed by law, then that would have to be done by amendment to laws other than the Outer Continental Shelf Lands Act. Such an amendment is clearly not within the jurisdiction of the ad hoc select committee. In any case, owners of foreign-flag, foreign owned drilling vessels would never want to have their vessels documented under the laws of the U.S. because documentation is something which is only sought or needed in three cases:

(a) When the vessel must be enrolled so that it can take part in U.S. fisheries;

(b) when the vessel must be licensed so that it can engage in U.S. coastwise trade; and

(c) when the vessel must be registered so that it can engage in foreign trade and be assured of certain collateral advantages of being a U.S. documented vessel.

None of these cases would apply since drilling vessels would not be involved in those activities. Further, various U.S. ownership requirements would have to be met. Since few foreign owners would want, or be allowed, to change the ownership of their vessel. The result of any documentation requirement would be to ban the use of foreign vessels on the Outer Continental Shelf. Such a proposal was overwhelmingly rejected during floor action on last year's Outer Con-

tinental Shelf legislation and is opposed by the Carter administration in their letter of April 22, 1977.

The committee adopted proposed section 4(e)(3) which would require that all foreign-flag vessels operating on our OCS meet U.S. safety standards and submit to Coast Guard inspection. This section seeks to protect the U.S. Outer Continental Shelf from substandard equipment and vessels, while at the same time avoiding a violation of our agreement to the International Energy Administration. Under the IEA the other non-OPEC energy consuming nations and the U.S. have made a strong commitment to the free exchange of technology and other energy resource development means at our disposal in order to loosen the grasp of OPEC on our economic lifeline.

Even though the United States dominates the energy industry worldwide, this provision would deny us access to the rapidly advancing technologies of the Norwegians or Japanese, for instance, unless their vessels were to be documented as U.S. flag ships. Since it is highly unlikely that this would ever occur this provision would provoke years of delay as we attempt to duplicate their expertise.

For example, the most expeditious way to develop our resources in hostile frontier areas of the OCS may be to use an available Norwegian rig, developed to withstand the climate of the North Sea, for a year or so rather than attempting to construct our own.

Our Department of State opposes provisions such as this which will restrict the marketplace, yet at a time when the United States needs to expedite rather than retard production from our OCS, we provoke disunity amongst the non-OPEC consuming nations and inhibit our access to others' technology by including documentation requirements in this legislation.

We hope that all members will join in supporting a minority amendment to strike the documentation references in proposed section 31 of H.R. 1614.

REVENUE SHARING—TITLE IV

During the markup of H.R. 1614 the Minority and three Members of the Majority voted for the Breaux-Hughes-Treen Amendment for revenue sharing, and in opposition to the Murphy Amendment to the Coastal Zone Management Act. A few of the differences between the two proposals are listed here:

BHT	*CZM*
This proposal is limited in applicability to the OCSLA.	Amends the CZM Act; States without approved CZM program would receive no moneys without a special finding.
Establishes $200 million fund to come from OCS revenues.	Provides for an authorization of $125 million subject to appropriation and OMB scrutiny.
Amount of money to be received determined by four point formula designed to determine real impacts from OCS development.	Amount received not related to need. Within an OCS region all States would receive 2 percent of the part of the appropriation allocated to that region.
States may use funds as designated by the State legislatures for any public service facility in an impacted area.	Gives the Secretary of Commerce new authority to approve each proposed use of funds project by project.
States receiving OCS revenue sharing funds would have to give top priority to repaying loans granted under the CZM Act.	No such stipulation.

Distribution of Federal revenues derived from resources development is not a new idea; the Coal Leasing Act as amended last year now provides the interior States with 50 percent of the royalties from resources located within the State, with no questions asked and with the very stipulations proposed by the BHT amendment as to how the money is to be used.

Offshore development may be entirely in Federal waters, but the support facilities and personnel will all be based onshore. If the Federal Government is going to help compensate the states for the OCS-related impacts which occur, as proposed in title IV, then obviously the four-point formula (40 percent of the revenues go to an area for the amount of new acreage leased offshore; 20 percent for oil and gas produced offshore; 20 percent for oil and gas landed onshore; and 20 percent for new employment) recommended by Messrs. Breaux. Hughes, and Treen would be a more workable, effective means of distributing an appropriate amount of the Outer Continental Shelf revenues.

DELAYS IN PRODUCTION

Despite all efforts made thus far to encourage reduced rates of consumption of oil and natural gas, demand continues to grow. It is also a fact that domestic production continues to decline, forcing increased importation of foreign oil. Facilities for receiving landings of dangerous liquified natural gas are being planned for the east coast. The political and economic power of OPEC continues to grow as does the risk to the environment from ever increasing use of tankers to import the foreign oil needed to meet domestic demand. Delays in the production of new domestic Outer Continental Shelf resources will only exacerbate this dangerous situation.

Whenever leasing or operations on the OCS would be likely to cause undue or avoidable environmental harm, they should not be allowed to proceed. On the other hand, bureaucratic procedures and unproductive court challenges which serve only to delay eventual approval should not be tolerated. We commend the committee in its attempts to further minimize the risks from domestic OCS production. The effect of its chosen procedures, however, is to tolerate the even greater risk associated with continued reliance on imports via tankers for an unnecessarily long period of time.

Provisions of the bill discussed above would almost universally add unnecessary, costly and time-consuming steps to those now required to be taken before new production can be made available to the public. They will also cause confusion and cloud the economic picture to the extent that investor confidence will be shaken. The formulation and implementation of all the new regulations required to carry out these provisions would, itself, be a delaying factor. Many of these and other new provisions in the bill would also give rise to costly and delaying lawsuits.

It is difficult to analyze the impact of changes on a complicated mechanism such as the Outer Continental Shelf leasing program. A seemingly simple change may, when fitted into the mechanism, require further, unforeseen changes and adjustments which further delay leasing and eventual production of oil and gas. The only study of the

delay factors in H.R. 1614 known to us is one entitled "The Economic Impact of the Jackson/Murphy Amendments to the Outer Continental Shelf Lands Act on the State of Louisiana" prepared and compiled by Dr. Warren F. Rogers, professor and chairman of the Department of Management Science at the University of Rhode Island. Dr. Rogers, who has studied the offshore oil industry for more than a decade, did this study for some concerned businessmen in Louisiana and concludes that H.R. 1614 will cause a minimum of a 3-year delay off Louisiana. In areas other than the Gulf of Mexico, he predicts a minimum delay of 6 years. While we cannot pass judgment on the degree of accuracy of Dr. Rogers' predictions in this study, we do note that his previous study done for the American Petroleum Institute of the effectiveness of the bonus bid systems withstood substantive attacks during the hearings of the ad hoc select committee. There is absolutely no justification for delays even approaching the magnitude of those predicted by Dr. Rogers.

If this bill is to become an effective vehicle for achieving national goals it must be substantially amended so as to remove the problems referred to above. We hope that our colleagues will.

Respectfully submitted.

HAMILTON FISH, Jr.
EDWIN B. FORSYTHE.
DON YOUNG.
BOB BAUMAN.
CHARLES E. WIGGINS.
DAVID C. TREEN.

XVIII. Additional Minority Views

SECTION 31—DOCUMENTATION, REGISTRY, AND MANNING REQUIREMENTS

We endorse the section of the minority views which criticizes the part of proposed new section 31 of the Outer Continental Shelf Lands Act concerned with documentation. We also oppose the rest of the section which contains requirements as to the make-up of crews working on our Outer Continental Shelf. In most cases Outer Continental Shelf vessels, rigs, and platforms are being manned exclusively by U.S. citizens. Therefore, proposed new section 31 is an unnecessary and dangerous provision which can only result in an unhealthy international situation and a loss of employment for U.S. workers abroad. Technologically innovative and strong nations do not have to hide behind a wall of restrictive trade laws. At the present time, the United States still is the overall world leader in Outer Continental Shelf technology. If we have fallen behind in any area, it is because the new challenges which provide the incentive to undertake the investment necessary to make technological progress has been found not on our Outer Continental Shelf but primarily in the North Sea. Even in the North Sea U.S. workers and companies still provide services at all levels. They will continue to do so in large numbers provided we do not set off a landslide of protectionist reaction by enacting restrictions such as those proposed in this section. If, in fact, any country has restrictions on the employment of U.S. workers, we should be encouraging the State Department to work to get them removed rather than blindly following suit. Given the fact that very few foreigners are or ever would be employed on our Outer Continental Shelf, there is no real need to say they should only be allowed in special cases. There would be no benefit from such a requirement to offset the harm done to U.S. workers and companies abroad.

The only positive and sure way to expand employment opportunities for U.S. workers is to provide incentives and remove impediments to domestic Outer Continental Shelf production. Unfortunately, proposed new section 31 of the Outer Continental Shelf Land Act and H.R. 1614, reduce incentives and place new roadblocks in the way of even environmentally safe new Outer Continental Shelf activities and international economic cooperation.

Hamilton Fish, Jr.,
Ranking Minority Member.
Edwin B. Forsythe.
Charles E. Wiggins.

XIX. Additional Views of David C. Treen and Don Young

In 1953, Congress passed the Outer Continental Shelf Lands Act declaring that the taxing power of the States did not extend to that portion of the Continental Shelf more than 3 miles from a State's coastline (or 3 leagues in the case of Florida and Texas). During the succeeding 25 years not one offshore worker has sent his child to school in Federal waters, driven a heavy truck on highways in Federal waters, gone to a hospital on Federal waters nor connected his home to sewer lines in Federal waters.

The onshore impacts of Outer Continental Shelf development have been significant in gulf coast States and promise to be even more significant in States like Alaska where little local infrastructure existed prior to Outer Continental Shelf activity. Canals to accommodate pipelines from offshore rigs to tank farms and refineries, as well as canals for supply and crew boats, have caused salt water intrusion. This damages both the wetland environment in which fish and wildlife breed and the water supply of small towns. Highways in coastal areas (which were expensive to build in the first place because of unstable subsurface conditions) have been damaged by heavy trucks serving the Outer Continental Shelf industry, and the cost of repair is borne by the State when the roads are not on the Federal system. Port facilities and heliports have to be developed and schools built many years ago at lower costs have to be expanded to meet the needs of children of the offshore workers. Even if the worker does not make his home in the coastal area, hospitals to meet emergency medical needs and sewer systems capable of processing waste from the offshore facilities must be built in coastal communities. There is no assurance that a local tax base will arise in the same community which is required to furnish services and facilities needed because of Outer Continental Shelf activity.

Congress took the first step toward assisting coastal States with these fiscal and environmental impacts of Outer Continental Shelf development when it passed the Coastal Zone Management Amendments of 1976, offering loans for public facilities and grants to solve environmental problems. Although welcome after 25 years of neglect, the coastal energy impact program (CEIP) was only a token approach to the massive impact of federally encouraged energy activity on coastal State and local governments—a fact brought to the attention of Louisianians by the Presidential challenger in last fall's election.

On Saturday, October 30, 1976, 3 days before the Presidential election, Democratic candidate Jimmy Carter told an audience in New Orleans:

> I think it's time we had a fair allocation of Federal funds to give to local and State governments so you can still have a good quality of life and still supply oil and natural gas to the country.

In reporting then-candidate Carter's remarks on page 1, the New Orleans Times-Picayune of October 31, 1976, further explained:

> Although Carter's statement was vaguely worded, press secretary Jody Powell said the Democratic nominee was proposing splitting revenues from offshore drilling between the Federal government and local government—a program which could mean millions for Louisiana in the future.
>
> Afterwards, U.S. Senator J. Bennett Johnston—Carter's State campaign chairman—said the Democratic Presidential nominee's remarks amounted to a direct call for offshore revenue sharing.
>
> At McAllen, Texas, Stuart Eizenstat—Carter's issues advisor—said the Democratic nominee intended to propose an offshore revenue sharing program similar to one pushed by Johnston and other State officials.
>
> Under present law, most Federal offshore revenue sharing is designed to deal with onshore environmental effects of offshore drilling.
>
> "He (Carter) would like to broaden that to have a more generalized sharing of funds," Eizenstat said. "It's more or less an offshore revenue sharing proposal for revenue that comes from Outer Continental Shelf leasing," he added.

We are very disappointed that the select committee disapproved by a vote of 10–9 an amendment offered by Congressmen Breaux, Hughes, and Treen, which would have provided for offshore revenue sharing along the lines of the Carter-Powell-Eizenstat proposal. Our amendment, which we plan to offer on the floor, would have shared $200 million of the Outer Continental Shelf revenues per year with coastal States. This would amount to barely 6.5 percent of the Federal revenues anticipated in fiscal year 1978.

Our amendment would have distributed this modest sum among coastal States based on their share of Outer Continental Shelf energy activity, utilizing the factors of a formula enacted into law last year for the distribution of Coastal Energy Impact formula grants. We provided that no one State could receive over 30 percent of the total funds distributed and, further, that no State in an area where leasing occurred would receive less than 1 percent of the total funds to be distributed. States would be required to expend the funds received in those parts of the state impacted by Outer Continental Shelf energy development to provide public facilities and public services which the state legislature found to be needed.

In preparing our amendment, we carefully considered the provisions of the Coal Leasing Act of 1975 which was passed overwhelmingly in the last Congress over the veto of the President. That legislation amended the Mineral Leasing Act in a number of respects including:

(1) Substituting the exact language on eligible uses of grant proceeds that we proposed in our Outer Continental Shelf Revenue Sharing amendment for 1920 Mineral Leasing Act language limiting use to schools and roads.

(2) Increasing the share of coal leasing revenues going to the State in which the Federal land leased is located from 37½ percent to 50 percent of the total Federal receipts.

In light of the precedent of the Mineral Leasing Act and the President's statements in New Orleans, we are at a loss to understand why the Democrat majority on the select committee should oppose our proposal. Instead the committee approved an amendment by the chairman which amends last year's Coastal Zone Management Amendments despite the fact that such an amendment was clearly outside the jurisdiction of the Select Committee on the Outer Continental Shelf.

The differences between our proposal and that adopted by the committee are great.

NECESSITY OF APPROPRIATIONS

OCS revenue sharing

The Breaux-Hughes-Treen (BHT) amendment would have provided for automatic entitlements of $200 million in fiscal year 1978 and an amount equal to $200 million adjusted for inflation in every fiscal year thereafter.

CZM amendment

The committee amendment merely authorizes appropriations of $125 million in each year between 1979 and 1984. The Coastal Zone Management Act presently authorizes $50 million to be appropriated but the President requested a mere $15 million in fiscal year 1978 and only $17.6 million was in fact appropriated.

ALLOCATION FORMULA

OCS revenue sharing

The BHT amendment would have allocated the funds shared among Coastal States on the basis of the 4 factors used in the formula contained in the Coastal Zone Management Act of 1976.

CZM amendment

The committee amendment would allocate them simply on the basis of 2 factors—new acreage leased adjacent to a State and oil and gas first landed in a State. The two factors in the present CZM law which the committee would eliminate are (A) oil and gas produced adjacent to a state and (B) persons who obtain new employment as a direct result of Outer Continental Shelf energy activity. These are very significant.

(A) Production Adjacent. Our colleague, Representative Bill Hughes, observed that when oil and gas are produced in waters adjacent to New Jersey but landed by pipeline in Delaware, New Jersey would not receive any CEIP funds as a result thereof. This is because, after the year in which leasing take place, only the volume of produced oil and gas landed in the State will be considered in the formula.

(B) New Employment. The other factor eliminated, employment, is the only factor which the Congress found important enough to include in the allocation formula for coastal energy impact program loans. Time and time again last year the spokesmen for the Senate

and the administration advised the conferees on last year's CZM bill that the principal need for public services and facilities arises in a state adjacent to Outer Continental Shelf production when new employees take up residence.

LOAN REPAYMENT

OCS revenue sharing

The BHT amendment was carefully drawn to prevent the undue enrichment of any State or the granting of assistance to States which have not been impacted by Outer Continental Shelf activity. It further prevented any State from double-dipping through the coastal zone management loan program and the Outer Continental Shelf revenue sharing program we proposed. Under the present Coastal Zone Management Act, $800 million will be loaned to coastal States for the provision of public facilities and public services needed because of coastal energy activity. Under our proposal, States receiving revenue sharing funds would have to use those funds to repay existing loans.

CZM amendment

Under the committee language, however, there is no requirement that the funds provided be applied first to outstanding direct loans. Indeed, as under existing coastal zone management law, the only requirement would be that States first apply grant proceeds to the repayment of federally guaranteed bonds which the State found it could not repay from ordinary revenues.

FEDERAL PROJECT-BY-PROJECT REVIEW

OCS revenue sharing

The BHT amendment provides that States may use revenue sharing funds for any public facility or public service in an area impacted by Outer Continental Shelf activity which the state legislature may designate.

CZM amendment

The committee language, on the other hand, specifically provides that the states cannot spend 1 cent until the Secretary of commerce has approved each proposed use, project-by-project. The House Merchant Marine and Fisheries Committee and the National Governors' Conference, among others, have been adamant that the Secretary does not now have the authority to subject CEIP formula grant use to prereview, as we note below.

COASTAL LAND USE PROGRAM PREREQUISITE

The chairman urges that direct revenue sharing through the Outer Continental Shelf Lands Act not be adopted lest it "devastate those coastal management efforts under way." He states in the foregoing report, "The coastal zone management program is at a critical stage nationally and our coastal States should not be encouraged to abandon the strenuous efforts they have made so far to establish balanced management programs for the use of their coastal resources." We do not

wish to encourage States to abandon their coastal resource management efforts, but neither do we believe that Federal energy impact assistance should be held hostage to the States adopting management programs satisfactory to the Secretary of Commerce.

To date only one State has been able to obtain Federal approval of a coastal zone management program; and the language of the 1976 act which makes energy impact assistance available to unapproved States has been interpreted narrowly by the Commerce Department. We don't believe it is reasonable to condition the receipt of a very small fraction of the Federal revenue from the Outer Continental Shelf on State adoption of a coastal management program drawn to the satisfaction of a Federal agency. Inland States receive 50 percent of the revenues derived from minerals leased on their Federal lands without any Federal approval of their land-use laws.

The experience of the last year, since the adoption of the Coastal Zone Management Act Amendments of 1976, gives us no reason to prefer using that Act as the basis for further energy impact assistance. On December 10, 1976, the Oceanography Subcommittee of the House Merchant Marine and Fisheries Committee held oversight hearings on the regulations then proposed to implement the 1976 coastal zone management amendments. At that time, former Congressman Pierre DuPont (now Governor of Delaware) who had been a prime sponsor of the formula grant concept, said of the Commerce Department's regulations:

> They have misconstrued the intent of Congress. I think they have deliberately been writing regulations that do not reflect the intent of Congress. Going back to the question of prereviews by the Secretary of projects that are going to be undertaken by the States, we have a very strong disagreement. I think the intent of Congress, starting in the subcommittee, where I offered the original automatic grant, going through the full committee and through the full House of Representatives and indeed, going through the conference process, clearly indicate that we intended it to be automatic and that there would be no prereview. I believe everybody on the House side agreed with that.

During those hearings, Governor Hammond of Alaska submitted a letter on behalf of the National Governors' Conference in which he stated:

> Thus, when the draft CEIP regulations were first published in the Federal Register on October 22, 1976, we reacted with dismay, as did nearly all the coastal States, at their complexity and restrictive tenor. The regulations seemed drafted to defeat the objectives of the law—expedient and equitable aid. CEIP should be seen as the first step toward a broader, balanced set of energy impact aids. We believe that the problems shared by impacted States would be better addressed by a direct revenue sharing approach that provided funds immediately and as a matter of right whenever federally sponsored developments imposed serious fiscal or en-

vironmental burdens upon the States. In our judgment, the CEIP can best serve as a fall-back program to insure States against the possibility that their recoverable costs might outrun the revenues provided under a basic revenue-sharing formula.

It is just such a direct revenue sharing approach that Congressman Breaux, Hughes and Treen proposed in committee. It had the support of all of the Republican members of the committee and 3 of the Democratic members. It will be offered again on the floor of the House in the hope that a majority of the House will want to fulfill President Carter's promise of last October 30 to the coastal States.

DAVE TREEN.
DON YOUNG.

XX. Supplemental Views of Honorable Robert E. Bauman

While I generally concur with the views expressed by the minority members, I feel that it is important to emphasize certain aspects of H.R. 1614 in addition.

PUTTING UNCLE SAM IN THE OIL BUSINESS

The single most objectionable feature of this legislation is contained in section 11 which, in my opinion, will inevitably lead to the Federal Government engaging in not just exploration, but eventually, production of gas and oil. The last thing a government which can barely deliver the mail needs to do is to expand its bureaucratic tentacles into the oil business. Granted, the oil companies are hardly known for a great degree of virtue and saintliness, but they are at least motivated by the need to produce a profit and to hold down costs, a constraint unknown to government.

I see the day when those who advocate Federal exploration for oil and gas in the Outer Continental Shelf areas will demand, once discoveries are made by the Government, that production be reserved to the Government as well. In the meantime millions, if not billions, of taxpayers' dollars will be tied up and perhaps lost forever on dry holes, when such costs and risks should be borne by private enterprise under proper leasing procedures.

Unless all possibility of Federal involvement in exploration and production of gas and oil is removed from the bill, I cannot support it. Hopefully, appropriate amendments will be adopted in the House which may cure these defects. I should note that when this bill was reported last year, I voted for it, both in the committee and in the House. It was only after the conference with the other body produced legislaion which clearly authorized Federal involvement in gas and oil exploration and production that I opposed the bill which was narrowly recommitted to the conference by the vote of the full House.

STATE AND LOCAL PARTICIPATION

One area of improvement over existing law which this bill proposes, and which I fully support is the requirement that State governments, and through them, local units of government, be given a chance to influence Federal policies regarding offshore oil and gas leasing and production. For too long, the Federal Government has ignored the rights and needs of the coastal States and their citizens who are usually most affected by such activities. The mechanisms established in this bill will also allow full citizen participation at crucial stages of government decisionmaking and this is all to the good.

This particular section of the legislation, allowing State, local and individual participation is of great importance to areas such as I represent, including Worcester County and Ocean City, Md. During the hearings on the bill, it was my pleasure to have the mayor of Ocean City, Hon. Harry Kelley, testify. He placed great emphasis on this aspect of the Bill.

OIL SPILL LIABILITY

Frankly, I believe that the oil spill liability section of this legislation could and should be strengthened. The economic and physical devastation which can and has in the past, resulted to coastal areas must not only be protected against, but fully compensated for as well. A major, or even minor oil spill during the vacation season could wreak havoc with coastal areas. At the same time, I do believe that this bill offers improvement over existing federal laws and I am hopeful that companion oil spill liability legislation which I and others have cosponsored will be acted upon in Congress soon.

IMPACT ON NATIONAL ENERGY POLICY

While we can all applaud the parts of this legislation which seek to protect the environment and require a maximum return for the taxpayers from oil and gas leasing in frontier areas, I do think the majority of the committee should have given greater consideration to the impact of this bill on the overall energy problem which faces this Nation. Repeatedly we have been told by the President and spokesmen for his administration that their goal is to increase the available supplies of energy, including fossil fuels. Since the Outer Contimental Shelf areas are one of the last major untapped domestic sources of oil and gas, we have to ask whether or not this legislation is going to help in the increased production we obviously need. Just as Federal strip mining legislation contradicts a desire for more coal production, I am afraid that many of the complicated procedural mechanisms in this bill will also result in dragging out Outer Continental Shelf leasing for years before any actual production results. While a certain amount of delay and governmental control is inherent in any Federal regulation, I hope that the House will give serious consideration to minority amendments which will seek to improve this Bill.

BOB BAUMAN.

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